

1895-047 Chancery Causes: R. E. Litton vs. Ira Baker
Lee Co.

Stout, Shuler, Rivers, Flarary, Munsey, Sewell

CA-Contract Dispute
T-Property

-Deed

To the Honorable W. T. Miller,

Judge of the Circuit Court for Lee County, Virginia:-

Your orator, R. E. Litton, humbly complaining, sheweth unto the Court that by deed dated on the 23rd day of December, 1867, Flemming F. Shelton and Sarah J. Shelton his wife conveyed in fee simple to Joel S. Cox their undivided one seventh part in and to a certain tract of land situated in Lee County, Virginia that descended to the heirs of Jeremiah Skaggs, deceased, known and called the home tract of land of the said Jeremiah E. Skaggs, deceased. Said deed is recorded in the Clerk's office of the Lee County Court, in Deed Book No. 15, page 531. A copy of said deed is herewith filed marked exhibit "A", and prayed to be considered as part of this bill; That afterwards the said Joel S. Cox and Naomi his wife by deed dated on the 25th day of July, 1868, conveyed in fee simple to Dixon S. Litton their undivided one seventh part in and to said Home tract of land of the said Jeremiah Skaggs, deceased, which was conveyed to the said Cox and wife by the above deed; Said last deed is recorded in the Clerk's Office of the County Court for Lee County, Virginia in deed book No. 15, page 529; a copy of this deed is herewith filed marked exhibit "B" and prayed to be considered as part of this bill; That in April, 1868, the said Joel S. Cox filed his bill in equity in the County Court for Lee County, Virginia, against Jeremiah Skaggs' heirs et al to partition the lands of the said Jeremiah Skaggs, deceased, among his heirs and those entitled to said lands; that in said suit at the August Term of said Court, to-wit, on the 21st day of August, 1868, a decree was rendered directing ^{the} portion of said lands of the said Jer-

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emiah Skaggs, deceased, to be made amongst those entitled thereto, and appointed Carr Bailey, David Cox and John Reasor as commissioners to make said partition; that said commissioners performed the duties assigned them under said decree, and on the 19th day of October, 1868 filed their report of the same; that at the January Term of said Court, to-wit, on the 19th day of January, 1869, a decree was rendered by said Court duly confirming said report of partition and allotting and assigning the seven shares in said land to the seven parties entitled thereto. Said decree and commissioners report are recorded in the Clerk's office of the County Court for Lee County, Virginia, in deed book No. 15, p.p. 638 et. seq. Copies of the same are herewith filed, marked exhibit "C", and prayed to be considered as part of this bill, and copies of the whole of said partition suit will be filed herewith in due time, if necessary.

Your orator here states that by an ~~imperfect~~ inspection of the said exhibit "C" it will be seen that the interest of the said Flemming F. Shelton and wife in said land was laid off and assigned to the said Joel S. Cox for the benefit of Dixon S. Litton; that it is lot No. 1 in said partition, containing 20 acres more or less and is fully described in said report.

Your orator further states that afterwards the said Dixon S. Litton and Lavina, his wife, by deed dated on the 2nd day of September, 1868, conveyed in fee simple said lot of land No. 1 that had been so assigned to him in said partition, to-

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gether with other lands, to your orator; said deed is recorded in the Clerk's Office of the County Court for Lee County, Virginia in deed book No. 28, page 571; a copy of said deed is herewith filed marked exhibit "D", and prayed to be considered herewith; that afterwards the said Dixon S. Litton and Lavina his wife, by another deed dated on the 4th day of April, 1893, conveyed a right-of-way and water right to your orator in and to the spring where William Stout then lived, and for a full and satisfactory evidence of the same, reference was made to the commissioners' report in the partition of the estate of Jeremiah Skaggs, deceased. Said deed is recorded in the Clerk's office of the County Court for Lee County, Virginia, in deed book No. 28, page 574. A copy of said deed is herewith filed marked exhibit "E" and prayed to be considered herewith.

Your orator further states to the Court, that it will be seen from an inspection of said exhibit "C" that lot No. 4 was assigned to John Skaggs in said partition; that it contains 20 acres, more or less, and is fully described in said commissioners' report; that lot No. 4 has been sold and conveyed until on the 17th day of October, 1893, it was conveyed by deed of said date by William L. Stout and wife to one Ira Baker, the present owner, who is in the actual possession of the same, holding the same under the title of said Jeremiah Skaggs as aforesaid; that by an inspection of said exhibit "C" it will be seen that the following provisions for use of water was made in said commissioner's report: "There being no spring water on lots No's. 1, 2, 3, & 6, the owners or tenants of said lots shall have the right and privilege to water as

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follows: The owner or tenants of lot No. 1 to use water from a spring on lot No. 4 where John Willis now lives."

Your orator further states that all the parties to said partition at once took possession of their respective shares under said partition; that the said Dixon S. Litton and his tenants, and your orator and his tenants, of said lot No. 1 have occupied the same ever since the date of said partition down to the present time; that during said time ^{up} to the early spring of 1894, for over a period of 25 years they have used water from said spring on lot No. 4 openly, notoriously and continuously without any interference from the owner of lot No. 4; that during all of said period of said time the owners of said lot No. 4 have ~~xxxxxxxx~~ acquiesced in their using water from said spring, and ratified the provisions so made by said partition; that heretofore, to-wit, on the 27th or 28th of March, 1894, said Baker prohibited one Floyd Shuler, who was then and is a farm hand in the employment of your orator, and who was then and is now living under your orator on said lot No. 1, from using the water from said spring on said lot 4 and made threats of personal violence against said Shuler if he should again come on said lot 4 to get water from said spring; that thereafter the said Baker threatened to send your orator as well as said ~~Shuler~~ ^{Shuler} into eternity if they again entered said premises to get water from said spring; that he, the said Baker, has built an enclosure or house over said spring and locked the same to prevent them from the use and enjoyment of said water right; and that there is no other spring on or appurtenant to lot No. 1 fit for domestic use; that your orator is informed, believes and charges that said

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Baker is a man of violent temper and will unless enjoined carry his said threats into execution, and commit personal violence on your orator and said Shuler in case he, the said Shuler, should attempt to use said water; that said Baker has intimidated and dated the said Shuler by his threats aforesaid, and the said Shuler has not attempted to use water from said spring since said Baker prohibited him therefrom on March 27th or 28th last as aforesaid.

Your orator further shows the court that all of his title papers to said lot No. 1, and to his water rights and privileges to said spring on lot No. 4 were on record in the Clerk's office of the County Court for Lee County, Virginia, at the time and before the said Baker obtained a deed of conveyance to said lot No. 4; that he, the said Baker, at the time and before he contracted for said lot No. 4, had actual notice of your orator's rights and privileges to use water from said spring on lot No. 4; and that he, the said Baker, made said purchase with full knowledge of the same; and that unless said Baker is enjoined in accordance with the prayer of this bill great and ^{inc}imparable injury will result to your orator.

The object, therefore, of this bill is to protect and quiet the rights and title of your orator in and to the use and enjoyment of said spring on said lot No. 4, and to enjoin and inhibit the said Ira Baker from threatening or in any way from interfering with your orator or his tenants of lot No. 1 in the use and enjoyment of said spring on said lot No. 4.

The premises considered, and for as much as your orator is remediless save in a Court of Equity, he prays that the

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said Ira Baker be made a party defendant to this bill, and be required to answer the same ^{but not} under oath; ^{the oath being hereby waived} that the rights, title and privileges of your orator may be protected and quieted in and to the use and enjoyment of said spring; and that an injunction may be granted him, enjoining and inhibiting the said Ira Baker from threatening or in any way interfering with him or his tenants of lot No. 1 in the use and enjoyment of said water rights and privileges to said spring on said lot No. 4; and that all such other, further and general relief may be granted your orator as in the premises may be just and right.

B. H. Service +
J. F. Bullitt Jr.
P. O.

R. E. Litton

Virginia,
Wise County.

To-wit:

I, R. P. Barron

a Notary Public in and for the County and State aforesaid, do hereby certify that R. E. Litton this day appeared before me in my county aforesaid and made oath that the allegations contained in the foregoing bill made of his own knowledge are true; and that those therein contained made from knowledge and information derived from others, he believes to be true.

Given under my hand this 10th day of May, 1894.

R. P. Barron
Notary Public Wise County, Virginia.

By way of amendment, on filing of the petition of J. F. Bullitt, Jr. and in pursuance of the order of the court, I have this day made a party defendant to this bill, and required to answer the same under oath.

B.T.S.

C 8.04
S 1.50
Atty 15.00
Comm 11.28
Costs 484

R. E. Litton

3963
250
4213

vs. { Bill in
Chancery

Ira Baker

1894 2nd May Rule Bill
filed Spd 2nd and 3rd
1st June Rules taken the
last Monday in May
Cause set for hearing
by Plaintiff

Plffs Costs
Recovered

C 8.04
S 1.50
Atty 15.00
Comm 11.28
Costs 484
Co Clk 7.50

\$4813

Defts

C 2.50
S 1.00

Wp 2.50
6.00

To the Hon. W. T. Miller Judge
of the Circuit Court of Lee
County:

Your petitioner Wm. L.
Stout who humbly complain-
ing would respectfully repre-
sent, that there is now pending
in this Hon. Court, a Bill in
Chancery, filed by Robert E.
Litter against Ira Baker, the ob-
ject of which as appears from
the papers in said Cause is to
enforce in favor of the p^{ff} an
asserted right to take using water
from lot no 4, for the use of
lot no 1 of the land heretofore
partitioned among the heirs at
law and their vendees of the late
Jeremiah Skaggs deceased. The p^{ff}
asserts as owner of lot no one
this easement on lot no 4 - Your
petitioner sold lot no 4 and con-
veyed the same by deed of
General warranty to said de-
fendant Ira Baker, and your pe-
titioner is advised, that being liable
on his warranty, and bound thereby
to defend said title, that he has
an interest in the result of said
Cause, he prays therefore that he
be made a party defendant
to said Bill and be allowed to...

defendant said title, and he
furthermore states, that he was
an innocent purchaser of lot
no 4, not at the time knowing or
ever have heard of the plat
or his vendor's claim to said
supposed water right; and that
for that and other reasons he
can successfully defend said
cause & save his vendor & son
Baker harmless from said
supposed water right. And if
made a party he prays leave to
be allowed to file his answer in
due time to said amended Bill &
be allowed to make defense thereto
as he may be advised and here-
after permitted by this Hon. Court.

And as his duty binds he will
ever pray &c.

Wm. L. Stout-

A. A. Oncken for pr. Counsel.

Petitioner.

Sworn to before me this the 2nd day of
November 1894

A. B. Munsey Clerk

Wm L. Stout¹²

Acts }
Petition.

R. E. Littor

Filed November the 2nd
1894 A. B. Munsey Clerk

To The Hon. W. J. Miller Judge of the
Circuit Court of Lee County Va.

The demurrer and answer of
Ira Baker, to a bill filed in
this Hon. Court against him by
R. D. Litter.

Respondent says the pliffs Bill
is not good and sufficient in
law and of this he prays judgement
of the Court, &c.

But if any other or further ans-
wer ~~be~~ deemed necessary, answering
he says, It is true as appears by the
pliffs exhibits that the conveyances, and
partitions set out by him, were
made & had as shown by the same.

But respondent denies that the
said partition or subsequent convey-
ances give the pliff any right to take
and use water from the defendants
spring on lot no 4 - It is true its
partition, so states that lot no 1 or. is
to get water on lot no 4, that is a
Cabin then on lot no 1 was so to use.

But it will be seen, that the par-
tition does not, provide that lot no
4 shall be subject to this right - and
when respondent concluded to purchase
the farm he now lives on, from Wm L.
Stout he caused his title, that is Stout
title to be examined. He found Stout had
a conveyance among others, for lot no 4

there was no encumbrance or easement in his deed, and he was told that there was no exceptional Condition or easement in the assignment of lot no 4, in said partition, respondent did not go further than was all that he was purchasing of the Skaggs land now in controversy, and he was satisfied that, that, title was clear, and he is so still advised. He thereupon purchased the farm of which lot no 4, was and is a part, without any knowledge actual or otherwise that the plff had & claimed the right he now asserts.

Your orator made this purchase, in Oct-1893, and it would be a rather large undertaking for him to have gone over the records of every other man to see if he had title to this land, and if he were bound to search in the name of R. E. Litter or D. S.

Litter or Joel Lax for an encumbrance or would. Surely land may not in the name of any or every one else.

Your respondent therefore denies that he had any actual knowledge or that the recording of the plffs deed, gave him any constructive knowledge of such right as the plff claims. He denies that unless the report of the Corors had charged this easement upon lot no 4, that there is any such right in said lot

unless actual notice had been given thereof. Respondent has been informed by one L. Stout his vendor, that he Stout purchased said lot no 4 without any knowledge of such right, but was informed of it after he purchased, but that soon thereafter D. S. Litter conveyed this lot no 4 by its plat exhibit "D" to R. E. Litter but did not attempt at that time to convey any water right but only did so long afterwards when the said Stout offered to sell. Your respondent therefore charges that when D. S. Litter conveyed in Sept 1868, said lot without the supposed water right, it conveyed no such right on R. E. Litter and from Sept 1868, down to Aug. 1893 D. S. Litter his tenants & employees never asserted demanded or used said water under or by virtue of the right aforesaid. But he is informed by said Stout that R. E. Litter's tenants was permitted by him Stout to get water at some times from his pump, but not as a matter of right, but of grace, & that no use or occupancy, has ever been taken or made of the spring in question, but only to use water from the pump quite a distance below said spring on the same stream however. Your respondent therefore on this information charges that the tenants and

employees of the plff or D.S. Litter have
used enjoyed and held openly adversely
and notoriously said spring & water
therefrom, but upon the contrary for
more than ten years D. S. Litter has
abandoned the same, and during
that time down to Aug. 1893, R. E.
Litter had no claim thereto, and the
use thereof by him conferred no
right whatever.

Your respondent denies that he
ever threatened the plff his tenant
Shuler or any one else or that he
offered violence to them or either of them
he did forbid them getting water from
the spring and he did demand that
they stay away and he did tell them
he would not permit them to exer-
cise the supposed right, and he did
lock up the spring, all of which he
did under legal advice, to compel
the plff to assert his right if any
he had to said spring before this
respondent paid over the whole of
the purchase money, for as he had
purchased without any knowledge of
the plff's claim he wanted that
matter settled before he should fully
pay for the land - and a reference to
his deed a copy of which is her-
ewith filed it will be seen he has
a clear conveyance from said Stout.

Respondent admits therefore that he
 prevented the plff & his tenant from
 the use of water, he says however that
 he made any threats, but he in good
 earnest told the plff & his tenant they
 must stay out, and he intended that
 they should do so. All this occurred
 however after this ~~plff~~^{Respondent} had gone
 with com L. Stent his vendor to the
 plff and endeavored to settle & adjust
 the matter offering as the said Stent did
 to leave it to men, and if they decided
 that the plff was entitled to the spring
 to pay whatever sum they they should
 adjudge against him; to this reasonable
 proposition the plff fell in a pas-
 sion & cursed & swore and made great
 threats as to what he would do.

This respondent may have some
 temper, but he has not made so
 foolish an exhibit of it as the plff
 on this occasion & others when he
 tried to force his way to said spring
 the ~~plff~~^{Respondent} will endeavor to keep his
 temper in due bound; but he has
 the courage he hopes to defend his
 rights against all comers. If this is
 grounds for an imputation, to restrain
 a man's temper & threats, respondent
 is curious to know what the
 Criminal law is made for. This
 asserted plff that respondent says is
 false so far as threatening violence is concerned.

This respondent denies that the plaintiff
has any right to said spring or water
or that his exhibit covers the same.

He denies that D. S. Litterer or the plaintiff
ever has for more than ten years
exercised the same. He denies any
knowledge of the plaintiff's claim until
long after he had purchased and had
a conveyance therefor - He denies any
force or threatened force to the plaintiff or
his tenant beyond what in law
he had a right to do to protect his
property - And he avers that his
Vendor Wm L. Stout had said
spring in open actual culture use
for more than ten years before the
institution of this suit claiming
it free from all claims or de-
mands whatever - And that D. S. Litterer
had abandoned the same for more
than ten years before the conveyance
to your creditor. He denies each and
every allegation of the plaintiff's Bill
not herein admitted and, having now
answered he proposes to be dismissed
with his costs.

A. H. Freeman
P. J.

Ira Baker ^{P.}
(9)

ackd & Answer

R. E. Litten

-Filed May the 21st
1894 A B Munsey
Clerk

To the Hon. W. T. Miller Judge of
the Circuit Court of Lee Co
Virginia:

The Demurrer and
separate Answer of Wm L.
Stout to a Bill filed in this
Hon. Court against him and
others by R. S. Litter:

Respondent says the plffs
bill is not good and suffi-
cient in law and of this he
prays judgement of the Court &c.

But if any other or further
answer be deemed necessary
answering he says: It is not
true that the plff has the water
right asserted by him, to exist
on lot no 4, in favor of lot
no 1. - The reservation or assertion
in the titles of no 1 lot, is no
part of the title of lot no 4.
And such a privilege as is set
out in lot no one to be good &
valid must be as definite and
accurate as a deed, in which
nature it is. But by reference
to said Monument it will be
seen it is too indefinite vague

and uncertain to be enforced &
therefore is, as your respondent
is advised null & void, and of
no effect. Your ~~Complain~~ re-
spondent, denies that he ever
recognized or admitted any such
right as the plff asserts, or any
other as a right; this respondent
purchased lot no 4, and paid
a full & fair price therefor, and
at the time, and before his pur-
chase and for many years
thereafter he did not have any
knowledge whatever of the
plff's asserted right, as claimed by
D. S. Litter his vendor. It is
true D. S. Litter and his employees
and the plff came often to this
respondent's pump not to the spring
and got water, and this re-
spondent made no objection, as
he would have allowed the same
to any other neighbor, nor did
the said D. S. Litter or the plff ever
claim such as a right; and no
such thing was ever mentioned by
the plff. - The water they got

They used as freely on their other
land as for the use of lot no 1
and if the granting such right, and
privilege serves to divest a man's
right & title to his property then
he holds his tenure to land by
a very frail & uncertain hold.

Respondent denies that at the time
he purchased lot no 4, or before he
had any knowledge of the plffs or
D. S. Littons pretended right. And he
is advised that as a matter of
law it was not incumbent on
him to examine the report of
partition, in so far as it related
to lot no 1, but that he was
only bound and as a matter of
fact did only examine lot
no 4 whose title is clear. He
denies each and every one of the al-
legations of the plffs. Bill in so
far as it asserts a right of water
for lot no 1 or alleges this respondent
ever recognized the same as a
right or had any knowledge thereof
or that the plffs were using
said water, in its assertion of
a right; but as before stated

But he admits he gave them leave
and that they did occasionally
use water from the water of said
spring drawn at the pumps. And
having now answered the proofs
to be dismissed with his costs.

A. L. Prieeman
for deft Wm L. Stout.

Wm L. Stout. 13

ad. Answer

R. S. Littor

R. E. Litton Plff.

vs

Ira Baker et al Dfts.

} In Chancery

This cause came on this the 13th day of March 1895, for final hearing, upon the papers formerly read herein, the answer of Wm L. Stout, and general replication thereto, the exhibits and depositions of witnesses, and was argued by Counsel, On consideration whereof, the Court doth adjudge, order, and decree that the Defendant Ira Baker his agents servants and employees be and they are hereby perpetually enjoined and restrained from prohibiting or preventing the plaintiff R. E. Litton or any of his tenants of lot number one in the bill mentioned, from ^{for domestic purposes on lot No 1} using water, from the spring in the said bill referred to, and from in any manner interfering with the said Litton or any of his said tenants in the ^{said} use of the said water, and that the said Baker, his agents, servants, and employees be and

they are each and all perpetually enjoined from so locating the door to the house which has been built over the said Spring, as to prevent the said Lutton or any of his said tenants from having at any and all times the use of the said water, ^{for the purposes aforesaid} and perpetually enjoined from doing any other act which will in any manner interfere with the free access and right-of-way of the said Lutton and his said tenants to and from the said Spring, And the Court doth further adjudge order and decree that the said Lutton recover of the defendant Ira Baller his Cost in this Suit-Expended, and this Cause is Stricken from the docket.

R. E. Litton, ¹⁹
vs ^{Decree}
^{final.}
Ira Batterbat,

Q.B.

Page 176

Enter this

M. J. M.

March 13th 1895

R. E. Litton

vs Decree

Ira Baker

This cause came on ^{this day} to be again heard
on the papers formerly read herein on
depositions and on the petition of Wm
L. Stout, praying that he made a
party defendant and allowed to
answer the bill in this cause, and
was argued by counsel; whereupon
it is ordered that complainant amend
his bill and make Wm L Stout a party
defendant thereto, and this being
done at bar, ~~it is ordered~~ heard
is hereby given Wm L. Stout to file
his answers to complainant's bill on
~~or before 1st January sales 1895.~~
And this cause is continued.

R. E. Litton

v. { Decree

Ira Baker

Entered in
Chancery order

Book Page 102

Euler this

W. M. 16th

November 17th 1894.

P. E. Littow.
vs
Ira Baker. } In Chancery.

This cause came on this day to be heard on the bill of the plaintiff and exhibits filed therewith, the demurrer and answer of the defendant, and general replication to said answer, on motion of the defendant to dissolve the injunction granted in vacation in this cause, on the motion of the plaintiff for a continuance of this cause and the affidavit filed in support thereof, and counter affidavits filed by the defendant, and was argued by counsel. On consideration whereof it is adjudged ordered and decreed that the defendants demurrer and to said bill, as well as his motion to dissolve the said injunction be and the same are hereby overruled and denied, and this cause is continued.

R. E. Litton (10)
vs E Deere.
J. A. Baker.

Entered in Chancery Ord Book 4 P. 2.

Enter this,
W. J. M.
June 6th 1894.

Circuit Court of Lee County, in Vacation.

R. E. Litton

vs.

Ira Baker.

In Chancery.

This day came R. E. Litton by counsel and presented to the court in vacation his certain bill in Chancery against Ira Baker, together with the exhibits mentioned in the said bill, on consideration whereof it is adjudged, ordered and decreed that until the further order of this court the said Ira Baker, his servants, employees and agents be and ~~they~~ he and they are hereby enjoined and prohibited from threatening, or in any way interfering with the said R. E. Litton or his tenants of lot No. 1 in the said bill mentioned, in the use and enjoyment of the water and water rights and privileges to the spring on lot 4 mentioned in the said bill; and that the said Baker, his agents, servants and employees be and ~~they~~ are hereby enjoined from locking the door to the house which has been built over the said spring until further order of this court. But this order shall not take effect until the said R. E. Litton, or some one for him, shall execute bond ^{with good security} conditioned ~~as the law requires, in case of an injunction,~~ in the penal sum of \$300⁰⁰ ~~#~~

May 11th 1894 W. J. Miller
To the clerk of the Circuit Court
of Lee County Va.

Conditioned to pay all such costs as may be awarded against the plaintiff
and all such damages as may be incurred in case this injunction shall be dissolved

17th

R. E. Lutton

Decree in
Vacation

Ira Baker

R. E. Lutton

In vacation.

Circuit Court of the County, in vacation.

(17) (H. E. L.)

W. STONE & CO., N.Y.

1. The depositions of Lloyd Shuler, J. W. Rivers, J. B. Flanary, A. D. Litton ~~and~~ D. S. Litton & R. E. Litton, taken before me, A. B. Munsey, a Commissioner in Chancery for the Circuit Court for Lee County Virginia, pursuant to notice thereto annexed at the Law Office of B. H. Sewell in the town of Jourdills Lee County Virginia on the 2nd day of October 1894, to be read as evidence in behalf of R. E. Litton in a certain suit in equity depending in the Circuit Court of Lee County Virginia where in R. E. Litton is plaintiff, and Ira Basser is defendant.

Present B. H. Sewell attorney for the plaintiff

A. L. Pridemore attorney for the defendant

The witness Lloyd Shuler, being duly sworn, deposes and follows;

Ques 1. Please state your age, occupation and where you live.

I am about 30 years of age. I am a farmer. I live on R. E. Litton's farm in Lee Co VA.

Ques 2. What is the place called of Mr R. E. Litton's that you

live on, and how long have you been living on this place?

Ans I don't know. I have been living where I now live about 4 months.

Ques 3. While you have been living on this place, state whether or not you used water from a spring at or near William Stank's house or where Stank used to live. The foregoing question is excepted to because it relates to a time since its granting of its signature in this Cause and the defendant had no power to prevent its use. It also relates to a time after its defendant had purchased without knowledge of the plffs, asserted right.

A. H. Prentiss
Judge.

Ans I have used water from the Spring mentioned.

Ques 4. While you were using water from this Spring, were you or not Mr R. E. Sutton's tenant?

Ans I was.

1
Ques 5. State whether or not this is the Spring that is in dispute in this case?

Ans It is.

Ques 6. State whether or not you stopped using from said Spring, and, if you stopped state when you stopped and why.

Ans I stopped using water at that Spring I cannot tell exactly when I stopped. I did not want to go into the water.

Ques 7. State whether or not any one forbid or prevented you from using water from said Spring, and if so, who it was.

Ans Ira Baker forbid me getting water there

Ques 8. Did you or not get water from said Spring after Mr Ira Baker forbid you from getting water there.

Ans I did not.

Ques 9. In forbidding you from getting water from said Spring, please

state whether ^{or not} Mr Ira Baker
used words of threats against
you or Mr Litter, and
state as near as you can
what he said.

Ans If he used any threats I do not remem-
ber it. He said he would keep us out
of there.

Ques 10. After Mr Baker forbid you
getting water at said Spring,
state whether or not Mr
~~Litter~~ Litter directed
you to keep on getting
water from said Spring.
The above question is excepted to
in so far as it seeks to call
out an answer as to what the
plff R. L. Litter told the witness.
The declaration is self serving &
inadmissible - A. L. Richman

Ans Mr R. L. Litter directed me to keep on
getting water there.

Ques 11. State why you did not get
water from said Spring as
Mr R. L. Litter directed you.

Ans I did not want to go in.

Ques 12. State whether or not you were afraid of Mr Ira Baker to again get water from said Spring.

The foregoing question is objected to because the fear of its witness has nothing to do with it? A. L. Pickensmore

Ans I just did not want to go in. all I can tell you I did not want to go in. I am honest about it.

Ques 1 Cross Examined.

You say you have lived on Mr Littens place about four months, if this suit was instituted more than four months ago, you did not go there until after the suit was brought did you?

This question is objected to. Because the records show when suit was brought and Besides the question is argumentative

B H Sewell atty for App

Ans I was getting water there before the suit come up.

Ques 2 Then you are mistake in how long you have live there, and how long you have been there more than four months - How long have you been there -

ans I have been there four months.

Quest 3 Has Mr Baker ever forbid you getting water there since May 18th 1894, since the writ was served in this case?

ans He has not.

Quest 4 Did Mr Baker tell ^{you} not to go to the spring, or to the pump?

ans He just told me not to go to the water.

Quest 5 Who was with you when Baker told you to stay out?

ans Mr R. E. Litton.

Quest 6 What did you go over to the spring or pump for? and what did Mr Litton go with you for? Did you have buckets or pail with you or other vessels to carry water?

ans I went to get water, and he went to put me in. No Sir we did not have any vessels to get water in.

Quest 7 Then if I understand you, you went to get water to drink and Mr Litton went to put you in so you could get it?

ans Yes Sir.

Quest 8. Who began the conversation that day about the water Mr Baker or Mr Litton?

ans

As I was going the road behind Mr Litton Mr Baker asked me where I was going. I told him I was going up there to fix some fence. Mr Litton said I am going to take you up there to that water. Mr Baker said that Mr Litton nor no other man should go in there.

Ques 9 What fence was you going to fix and did you fix it?

ans It was a line fence above where I live. I did not fix it.

Ques 10 Did ~~you~~ Mr Litton and you start to fix the fence, and had nothing been said about the water that day, until you met up with Mr Baker?

ans Mr Litton told me he was going to fix up the fence. That as I know of.

Ques 11. Had you never before that day gone to Mr Baker as a new comer & asked him to get water from the spring on his land?

ans No Sir I got water right on till Stout sold the land.

Ques. 12 Did you live there before Stout sold the land to Baker?

ans I did.

Ques 13 How long did you live there
before Stout sold to Baker?

ans

I cant tell exactly how long, the best
I can tell you is about two or three
months.

Ques 14 How long was it before this suit
was brought, that the conversations
you say took place between you
Baker & Ritten about the water ^{up had} the
clay you say you went to fix
the fence?

ans

I could not tell you exactly how long
I reckon the suit must have been up
then.

Ques 15 When you used water, did you
go to the spring or pump to get it?

ans

I went to the pump.

Ques 16 Did ever ^{you} ask Mr Stout's consent or
any one else's to go to the pump -

ans

No Sir.

Ques 17 How did it happen that you went
to Stout's pump to get water without
any body's consent?

ans

Mr Stout give me leave to go there &
get water when I moved there.

Ques 18

I asked you a moment ago if you
ever asked Stout or any one else leave
to go to the pump and you answered no

I then asked you how it happened that you went to Stout's pump without leave and you say when you first moved there Stout gave you leave. Now please tell me which way is correct and you have leave or did you go without it.

Ans When I first got water there Stout gave me leave.

Quest 19 You state you live, on Mr R. E. Litter's land, please state whether or not you live on and cultivate, but no one, in land partitioned as the land of Jeremiah Skaggs deeded, or do you work on and cultivate other lands of Mr Litter?

Ans I do not know where lot no 1 is. I live in house on Mr Litter's land just above Mr Baker's, but hired to Mr Litter and worked for him.

Quest 20 Do you work on that part of Mr Litter's farm in and about your house say over about 20 acres, or do you in your employment work any and every where in this different farms he may send you. I worked for Mr Litter wherever he sent me.

Quest 21 After suit was brought, did not
Mr Baker tell you or your wife that
there was a suit about the spring and
that you could come & get water
whenever you desired, and hence
you not since then been constantly
using water from his pump.

This question is objected to.
Because the defendant cannot
prove self-serving declarations
or statements, it is leading,
Defendant's case from these things.
B.H. Sewell atty for D.

Ans No Sir.

Quest 21 Where have you been getting using
water from for the last two or
three months.

Ans we have got from Mr Baker's.

Quest 22 How come you to get water from there
who told you to?

Ans Mr Baker told my wife and she
told me.

What the witnesses wife told him
is objected to, as hearsay testimony.

B.H. Sewell atty
for D.

Re-direct examination.

Quest 1, State whether or not you moved

1
to the place where you now live on
R. E. Litton's land, last fall; and
after you moved helped R. E.
Litton to gather corn last fall,
Ans I moved there last fall and I helped
Mr Litton gather corn.

Ques 2. Have you or not lived
where you now live ever
since last fall when you
helped Litton gather corn?

Ans Yes Sir I live there yet.

Ques 3. Did you not at one time live
with William Stout, before
you moved on Litton's land?

Ans I lived with William Stout at one
time.

Ques 4. ~~Did not~~ While you were living
with said Stout, did not the tenants
of R. E. Litton ~~use for~~ having
where you now live use
water from the Spring in
controversy in this suit.

This question is objected to, because
Wm L. Stout is not a party, and such
a fact if true would tend to alter
and contradict his case to the defend-
ant, who therefore is not shown
to have any notice of any such right.
A. L. Philmore

Ans

The witness first answered that they did not. but after the Comr asked him again he said that he did not understand the question, and answered that they did get water there.

Ques 4,

While you were staying with Stout did he not say that R. E. Litten and his wife have a right to get water from this spring?

This question is objected to because in chief as is several of its foregoing and because chiefly leading - and because Stout has no interest in the same contrary his deed. ~~As~~ ^{Stout} ~~Witness~~

Ans

I never heard him ^{Stout} say anything about it.

Re - Cross Examined

Mr Shuler, you have stated several times that you had been living on Mr Litten's land about four months - and a moment ago you said you moved there last fall and helped finish gathering corn. Did you not know all the time that you went there last fall and that from last fall to the present actⁿ was more than four months.

13 Ans Yes Sir, I think it is just four months
And further this deponent saith not

witness 50^{cts}
1 day 50 Mileage
48 Total 98^{cts}

Floyd ^{his} Shuler
mark

J. M. Rivers another witness, being
duly sworn, deposes as follows:

Ques 1. State your age, occupation
and place of residence.

Ans. My age is 38 years, I am a farmer, and
my residence in Yokum Station Lee
County Virginia

Ques 2, Please state whether or not
you ever lived on, ~~or used~~
or Cultivated the land of R. E.
Littom ^{as his tenant} known and called lot-
no 1. in this suit.

Ans I never lived on it, I Cultivated
it last year.

Ques 3. During the time you cultivated
said lot did you or not use
water from the Spring in Can-
bony in this suit?

This question is objected to, because
it does not tend to prove or dis-
prove the issue in this case. But as
the defendant is not connected
with it.

A. L. Proctor

Ans Yes Sir I got water there when I
was at work there tending that land.

Ques 4 Who was then living where
Mr Baker now lives?

Ans Mr Stout.

Ques 5 State whether or not Mr William
Stout ever recognized Mr R. E.
Littons right to use water
from said Spring, where
it was and where and in
what way did he recognize
such right.

This question is excepted to because
Mr Stout's declarations can not be
given to alter his deed, and until
the defendant can be shown to
have notice of the assumed right
by a recorded instrument that
binds him or by actual notice
Stout's declarations can not bind
Baker.

A. L. Pielmeier

Ans I was talking to Mr Stout about
buying his land, and I told him
I would rather have his land if
if it was not that Mr Litton had a
water right there. And he said he
had a water right for one family liv-
ing on that lot. This happened some
time in the fall of 1893 at Mr Stouts house.

Grass Examined.

Quest 1 Do you ^{know} the lot known as lot no 1 one, being the lot claimed to have a water right on lot no 4?

Ans I know by information where lot.
 Lies.

Quest 2. What is the fair cash value of said lot no one, with the supposed right to water on lot no 4?

Ans I would think the land is worth \$30.00 per acre.

Quest 3 What is the fair cash value of said lot, and supposing the owner of it has no right to go upon lot no 4 for water? Give your best opinion?

~~Ans.~~
Ans. I would think it would be worth Twenty dollars per acre.

Quest 4 If a good well could be dug that would afford a plentiful supply of water, near the house or on some convenient part of the lot would not the land in that event be worth, as much as with the water right, that is by supposing the well water to be as good as the spring & sufficient for the use of a family on said lot no 1

The last three questions are
objected to, because they are
irrelevant and immaterial to
a decision of the issues involved
in this case. and besides the
last question is leading and
argumentative.

B. H. Sewell atty for P & H

Ans I dont think it would.

Quest 5. Please state your opinion of the
value fair cash value of lot
no 1 with its well upon it
supposed in question no 4?

This question is objected
to. Because irrelevant & im-
material to a decision of the
issue in this case. The value
of these lots are not involved

B. H. Sewell atty for P & H

Ans. It would be worth \$22.50 per acre
at the time you cultivated, the lot
no 1 last year I believe you said
did you cultivate any other land
than lot no 1

Ans I suppose I cultivated a little more
than lot no 1

And further this deponent saith ast.

John W. Rivers
mark

Witness. 98
attendance.

J. A. C. Flanory, another witness, being duly sworn, deposes as follows:

Ques 1. State your age, occupation and place of residence.

Ans

I am forty four years of age. My Occupation is Merchant & Farmer. My residence is Gokum Station Lee Va.

Ques 2 State whether or not ~~whether or not~~ you are acquainted with lot of land owned by R. E. Littor, known as lot-no 1, in this suit, where T. J. D. Shuler now lives, also where Wm Stout formerly lived, and the Spring in controversy in this suit. if so, how long have you known them.

I am acquainted with the land and have been all my life also know the Spring referred to.

Ques 3. During all this time, do you or not know that D. S. Littor and his tenants, and R. E. Littor and his tenants of lot-no 1, have used water from the Sped Spring.

The foregoing question is objected to

because D. S. Litton conveyed the land
in 1878, and has since had no interest
therein. And until 1893, R. E. Litton had
color of claim. And besides whatever
they may have done Baker is an
innocent purchaser without notice
of any such claim and it cannot
affect him. A. L. Pridemore
I have seen them coming from that
direction with water, and I suppose
they got it from the spring in question.
as that was all the spring

Ans

Ques 4.

State whether or not you ever
heard a conversation between
R. E. Litton & Wm Stout about
Litton's water right. Or said
spring, and if so, when
where and what it
was -

This question is objected to for reasons
before stated. That Baker is not
bound by them, and had no notice of
it. A. L. Pridemore

Ans

In the year 1890 I heard a conversation
between Mr R. E. Litton & Mr Wm Stout
in which Mr Litton claimed an
interest in said spring and Mr Stout neither ad-
mitted nor denied his right, after

1
Stout moved to Ky and came back
I told him what was said and
he said at the time they was talking
he did not know but what Litton
did have a right, this was after Stout
had sold the land.

So much of said answer as
refers to stout's conversation is objected
to because it was after he had sold
and conveyed. A. L. Prilemco

Cross Examination

Quest: You say you are acquainted
with lot no 1, what would you
say is the fair cash value of
said lot, with said supposed
right of water on lot no 4 and
its fair cash value without, and
with a sufficient well upon
it.

The above question is objected to, because
irrelevant and immaterial. The value
of said lot in any way is not
involved in this suit.

Ans: B. H. Seneca ^{attys} ^{reps}
With the supposed right of water I
would value the land at from \$30 to \$35.00
per acre, ~~and without the right~~ I would
value the land at not more than \$15.00
with no water.

Quest 2.

Has not Mr Litten after lands
adjoining lot no 1, all under
the same fence; and does not
his tenants on lot no 1 do
general work for Mr Litten
on his after lands. If you
answer he has after lands
state how near lot no 1 there is
a spring or branch of run-
ning water after than the spring
& branch on lot no 4, and does
not the branch from lot no 4
run down & upon Mr Litten's
after lands?

Ans

he has other lands adjoining ^{lot} no 1
I don't know myself whether it is in
the same enclosure or not. I think
his tenants do general work for him.
There is another ~~branch~~ some three
hundred yards from lot no 1. ~~in~~
the ~~south~~ ~~side~~ direction; but this
water is not suitable for drinking
purposes. It does ~~at~~ sometimes but
not only when the waters are high.

Quest 3

I will ask you if you have not
heard Mr R. E. Litten say, since the
question above was asked you,
objected to. Because however, Mr
Litten is here to answer for
himself.

B H Sewell ^{all} ~~for~~

24

that lot no 1 is not enclosed separately but by a fence enclosing other lands as well?

Ans

I have so heard him say.
And further this deponent saith not.

Witness, 90th

J J & Flanary

A. D. Litton another witness being duly sworn, deposes and says—

Ques. 1 State your age, occupation and place of residence.

Ans

My age is 40 years. Occupation is a Farmer. My residence is Yokum Station Lee County Va.

Ques 2. State whether or not you are acquainted with ^{the} lot ^{of land} called lot no 1. in this suit, and lot no 4, and the spring in controversy, if so, how long have you known them?

Ans

I am acquainted with them, and have known them ever since I was a boy. That is have known the lands & the spring.

~~Ques 3~~

Ques 3.

During the time you have known lot no 1. who has been in the possession and occupancy of the

Same,

This question is objected to for reasons heretofore stated, that is that until the defendant is shown to have knowledge by a recorded instrument or actual occupancy and statements by the occupants, none bearing

A. L. Pridemore

Ans

My father owned it until he transferred to my Brother R. E. Sitton & they have had it in possession, and have had different tenants upon it.

Ques 4,

During all this time, did not D. S. Sitton or his tenants, and R. E. Sitton or his tenants let No 1. use water from the Spring in Cautionary in this suit -

The foregoing question is objected to for reasons above stated 2nd top of Page.

A. L. Pridemore

Ans

They did.

Ques 5

During the time you have known said lot no 1. who has been living on and in the possession of the land on which said

Spring is situated.

Ans

Henry Miller first Owned it; and he Conveyed to W^m L Stout and Stout Conveyed to Ira Baker the present owner.

Ques 6. State whether or not there is any water, other than the Spring in controversy, on or appurtenant to said lot no 1. fit for drinking or domestic purposes, ².

This question is objected to because irrelevant, and in no way affects the defendant Baker. A L Priemere

Ans

There is not.

Ques 7. State whether or not the defendant Ira Baker, ever had a conversation with you in regard to what William Stout had said to him about R. E. Sutton water right to said Spring, and if he did, state when and where it was, and what he said to you about the same.

This question is objected to, because it does not show whether or not it was before or after his purchase from Stout

A. L. Priemere

Ans I don't remember ~~whether~~ this conversation took place when my father was present or not but I do remember that it took place at some time.

He had a conversation with me in regard to it. It was some time last Spring at my house. I think about April. He said ^{he} wanted to ask about a water right. He said Mr Stout had told him that R E Litton had claimed a water right but that he had stopped the family from using water and that R E Litton had threatened to law him about ^{it} but dropped it and did not do so. My father and myself explained to him that it was not about the water ^{right} to lot no 1, and he said every body else had told him that R E Litton had a water right to the Spring*.

Ans 8, State whether or not Mr Boller said that Stout ~~said~~ made these statements before the court, or deed was made to him for the Stout-land.

Ans

My recollection is that he said this occurred when they was ~~meeting~~ ^{I.E. the conversation} between Stout ~~and~~ ^{and} ~~he~~ ^{he} also spoke of it when they was sowing wheat sometime last fall (about October).

The further taking of these depositions is adjourned until to morrow morning at 8 o'clock this the 2nd day of Oct 1884
A B Munsey Commr

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Met pursuant to adjournment at the law office of B H Sewell at 8 O'clock A M, this the 3rd day of October 1894

A. B. Munsey Comisr

Present the same attorneys as on yesterday.

Ques 9. Please state whether or not D.S. Lutton and his tenants, and R.E. Lutton or his tenants during the time you speak of, have occupied lot no 1, and used openly, lawfully and notoriously water from the Spring in Embury.

This question is objected to because it does not show the time each one held, and it is irrelevant unless notice to Baker is shown. A. L. Pridmore

ans

I suppose they have I never heard of any objections until after Mr Baker come in possession of the land.

Ques 10.

State whether or not Mr Baker stated to you that Mr Stout told him at any other time about the said water right to said Spring, before his contract with Stout for the land was made, or before the deed was made to him, if he did, state when and what it was.

This question is objected to because
Stout's declaration can not bind
Baker unless notice to Baker is
shown, by a properly recorded instru-
ment or actual notice given before
the purchase made. And because
no deed to R. E. Litter is shown
for the time he so claimed.

A. L. Pridemore

Ans

The Conversation I had with Mr Baker
in regard to the Conversation with him
and Stout was after Stout moved to
Ky. I don't know when the deed was
made. But this conversation Baker had
with Stout he said was when they
was sowing wheat.

Cross Examined.

Quest 1 After your father deeded the land
but no 1 to R. E. Litter, did he ever
exercise the right to take and use
water from said Spring as stated
by you?

Ans

I Suppose he did. There was one
Season when he cultivated land there
that he used water from the Spring
that is cultivated a part of the Hobbs place.

Quest 2 Is it not a fact that your father
D. S. Litter and R. E. Litter used

said water when working on their adjacent lands, with hired hands, not residents of lot no 1, as much or more than said water was use by actual occupants of lot 1 lot?

Ans I suppose they did when they was working near the Spring.

Quest 3 Does your father still continue in the use of said water right? if you answer he does not please state as near as you can when within your own knowledge he did so use it the last time or times?

Ans I don't ~~know~~ know when he last exercised such right, but it has been some time.

Quest 3 If I understand you, in your former statements, the conversation you had with Mr Baker was after Stout had sold to Baker, and Baker had moved on the place & Stout moved away to Kentucky?

Ans It was after Stout had moved to Kentucky & after Baker had moved on the place.

Quest 4 And if I understand you, Baker was telling you of what Stout

said to him Baker, in the fall of last year 1893, while Baker was engaged sowing wheat on the Tent place & boording with Stent?

Ans Yes Sir that is correct,

Quest 5 Did you not then and now understand, that Baker did not sow wheat on the Tent place until after he had made his purchase from Stent?

Ans I think it was after he had purchased the land.

Quest 6. Has the house on lot no one been occupied by some one living in it all the time, since your father & R. E. Litten have owned it if you answer it has not state as near as you can how much of the time it has been re-occupied by tenants?

Ans As far as I know it has been occupied all the time except a few days when one tenant would move out before another would move in.

Quest 7 What would you say would be a fair cash value for lot no 1, with the right for the tenants thereof to

Ans I know nothing of what occurred between Stout & Baker. but me and my father explained to Mr Baker that there had been a controversy between R. E. Litton and Mr Stout about a tenant living in house on another piece of land but not on lot No 1. And we made this explanation to Baker from what he said Stout had told him,

Re-direct: Examination.

Ques 1. Do you know when Mr Baker moved on the Stout place, if so, when was it?

Ans I cannot state exactly, but think it was about the 1st of December 1893,

Ques 2. You say that Baker said, ^{Stout, about 1893} his conversation with said water right & the spring in Castro occurred when Baker was sowing wheat, now state if you can whether or not this wheat sowing was before the 15th day of October 1893,

Ans I cannot say.
And further this deponent says not,
A. D. Litton

Witnessed ^{etc}
2 days of 148

Dixon S. Sittou, another witness
being duly sworn, deposes as follows:

Ques 1. State your age, occupation
and place of residence.

Ans My age is 74 years. My Occupation
Farmer. My place of residence is
Rocky Station Lee County Va.

Ques 2. Are you acquainted with
the tract of land owned by Jones
miah Skaggs deceased, at the time
of his death, situated in Yorktown
Station Lee County Virginia, if so,
how long have you been acquaint-
ed with it?

Ans I have known the land ever since
1846 or 1847.-

Ques 3. Are you the D.S. Sittou to whom
a certain lot ^{no 1} was assigned
in the partition of the said
tract of land of said Skaggs,

Ans I am.

Ques 4. I hand you exhibits A, B,
C, D, & E filed with the ~~defendant~~
~~and~~ plaintiffs bill in
this suit, state whether or
not they cover lot no 1, and
are the title papers of said
R.E. Sittou to said lot no 1.

and the water right & the
Spring in Controversy,

Ans

They are the papers that cover lot No 1.
and the water right here in Controversy.
The foregoing question and answer
are objected to, because the title
papers show what they cover and
peroral evidence to show what they
contain are inadmissible, and
further because the fact sought to
be proven is admitted by the
Answer & is therefore unnecessary.

A. L. Pridemore

Ques 3,

Please state whether or not
all the parties to the partition
of the ^{said} lands of the said Jeremiah
Seago deceased, at once took
possession of and accepted the
the shares or lots assigned
them, in said partition?

Objection
2

The foregoing question is objected to
because there is no controversy in
reference to anything except the
water right and what the parties
to the partition did is in materi-
al & irrelevant. A. L. Pridemore

Ans

They did so far as I know. I never
heard of any complaints ^{from} any of them.

33.

Ques 4

State whether or not all the parties to said partition accepted the provisions made in said partition for the use of water, on the different shares? This question is objected to because irrelevant, and immaterial, no controversy existing as to its fact - except as to lot no 1.

Ans

Ans

~~They did~~

A. L. Pridemore

They did so far as I know, they made no complaint at the time.

Ques 5,

Please state whether or not you or your tenants, and your vendor H. E. Sifton or his tenants have been in the possession and occupied, said lot no 1, ever since the date of said partition, and if so, state whether or not you have exercised the right ^{made in said partition} to use water from the spring on lot no 4, during said time,

The above question is objected to because it does not show when he occupied or when he ceased & because Baker is an innocent purchaser without notice and the occupancy could not affect him.

A. L. Pridemore

Ans

Me and my tenants of Lot no 1 used water from the Spring on No 4 until R E Litton & Myself went into partnership and our tenants still used water from said Spring peaceably and unmolested, until the year 1889, Since that time R. E. Litton and his tenants have so used such water.

The foregoing question was & its answer is excepted for reasons often stated i.e. that Baker is an innocent purchaser without notice &c.

A. L. Prichard

Ques 6. State whether or not there is any other water on or appurtenant to said lot no 1, other than the Spring on lot no 4, fit for drinking or domestic purposes?

Ans

There is not.

Ques 7. Please state whether or not Mr Ira Baker ever had a talk with you in regard to a conversation that William Stout had with him, about R. E. Litton's water right to Spring on lot no 4, if so, state when Baker said Stout talked to him about

said water right, and what it was
that Stout said to Baker.

The foregoing question is objected to
because, hearsay, Baker can not
be heard to the prejudice of Stout.
Baker is a live & competent and
because what Stout said after he
sold in Centennial of his title
is not admissible. A. L. Prichard

Ans

I had a conversation with Mr Baker
at A D Littons house he asked me
what kind of a water right I had
to the Spring on Lot No 4. I told him
that I bought it in the year 1867.
and had, had it peaceably and quietly
ever since until I decided to
R. E. Litton, and since that time
him and his tenants have had
the same rights so far as I know.
this conversation occurred in last
march or April. As to what Baker
said Stout told him about said
water right. I make the same
statement A D Litton made.
Verass Examined.

Quest: When did you convey lot no 1 to
Mr R. E. Litton and when the possession
over to him was it by your deed of
sept 2. 1878?

Ans ^{I decided} ~~Sold~~ him the land September the 2nd 1878 and turned the possession of it over to him at that time, but we ~~continued~~ put the land in partnership and continued it until 1889.

Quest 2 After your deed of Sept-2nd 1878, did you claim any right to or control over lot no 1, only as the same should be used, in the partnership, and when you so decided it did not R. E. Litten put in as so much of his R. E. Litten part of the partnership Capital?

Ans I did not, and he did put it in as so much of the land in the partnership, I mean to say I did not use the land only under the partnership contract.

Quest 3 Please state why in your deed of Sept 2nd 1878, you did not embrace the said your supposed right to water on lot no 4?

Ans It was omitted by a mistake, when I found it so I told Robt I would convey it to him and I did so.

Question 3 put above is objected to, because the deed shows what was conveyed. is the best evidence

B. H. Sewell Atty
for R. E. L.

37 Did not you, and after you R. E.

Quest 4 Litter, claim the right, to use water from lot no 4 for your other lands. This question is well as lot no 1, and did not object to. R. E. Litter threaten to law Mr Stout for denying your right to do so. And as a matter of fact - here you not use water from said spring more for twenty or twenty on other lands than lot no 1?

Because the claim, to or right to use water on other lands was nothing to do with the rights on lot no 1. R. E. Litter only did so.

Ans

At one time I thought I did have the right, and did claim it. I suppose R. E. Litter claimed the same right. I do not know whether R. E. Litter threatened to law Mr Stout or not. I don't know that we did we would go and get a keg of water now and then.

Quest 5. How much in your opinion does the right for tenants or the owner of lot no 1 to have the right and privilege to use water from the spring on lot no 4, damage or require the sale of lot no 4?

This question is objected to. Because the value of these lots, or damages are not involved in this suit. and these

questions are irrelevant & immaterial
to a decision of the issue involved
in this case. B. H. Sewell atty for the

Ans. I would rather have Baker's farm by
\$5000 without any incumbrance on it.

Inst 6. What is the fair cash value of lot
No 1, with its water privilege
spoken of by you & what is its
fair cash value without such
right?

This question is objected to. Because
the value of these lots on water is
an irrelevant & immaterial
decision of the issue in this case.

B. H. Sewell atty for the

Ans. I would think the land to be worth
\$2500 or \$3000 per acre, ^{with the water right} and would
not be ^{worth} over half as much without
the water right. And I would not
have bought the land if it had
not been for the water right. For
I had a piece of land adjoining it
that had no water on it. and I
bought it before the land was par-
titioned. I accepted lot no 1 in the
partition because it had a water
right.

Re - Direct Examination.

Ques 1.

Did not Mr. Litton & his tenants
of lot no 1. use water from
Spring on lot 4, under the survey
of 1878.

This question is objected to be-
cause impossible the deed of
that date contains no such
provision and whatever the
meny have done could be
done under the deed.

A. L. Philmore

Ans

They did.

Ques 2.

State whether or not you
intended to convey whatever
rights to lot no 1, that were
conferred by your deed of
1878, to R. E. Litton.

This is objected to because, the
mistake if any could not pre-
judice Baker who is a purchaser
without notice.

A. L. Philmore

Ans

I did.

witness

And further this deponent saith not.

attended 2 days
\$1.00

R. E. Litton

R. E. Litton another witness being
duly sworn deposes as follows:

Ques 1. State your age, occupation and place of residence, and are you the plaintiff in this suit?

Ans My age is 42 years, I am a farmer and my place of residence is Dryden Lee County Va. I am the plaintiff in this suit.

Ques 2. State whether or not you are acquainted with the tracts of land known in this suit as lot no. 1 and lot no 4, and the Spring in controversy, and if so, how long you have known them.

Ans I am acquainted with lot no 1 and have known it for 21 or 22 years. And know the Spring on lot no 4, ^{the same length time,} but do not know the boundary of lot No 4.

Ques 3. State whether or not O.S. Litter and his tenants, and you or your tenants have been in the possession and occupancy of lot no 1, and if so, how long, and state whether or not during said time the said O.S. Litter and tenants, and you and your tenants ^{of lot no 1} have used water

#1.

from said Spring on lot no 4.
This question is objected to
for same reasons as stated to
the same question asked earlier
see. A. L. Pridemore

Ans

We have. about 21 or 22 years to
my own knowledge. We have.

mes. 4

State whether or not said use
of ^{said} water from said spring during
said time, has been open
notoriously, continuous, and
adverse?

This question is excepted to for
reasons after stated - Such pres-
cription could not affect - Mr
Baker unless he had had notice
by record or deed or otherwise. ~~or~~
A. L. Pridemore

Ans

mes 5 It has.
state whether or not the exer-
cise of said water right
has been made under the
title papers filed with your
bill in this case.

Ans

It has.

mes 6

State whether or not you or
your agent of said lot no 1.
was ever prevented from using

water from said Spring on lot 204,
and if so, who prevented you,
when was it, and how you
were prevented -

This question is objected to be-
cause in material was irrelevant

And

A.H. Philmore
my tenant Floyd Shuler & myself
were prevented. Ira Baker the
defendant in this suit prevented us
By threats of force & Violence, this
occured about the 23 or 24th of April
1894.

Ques 7. What were the threats and
means used by said Baker
against you & ^{of lot 1,} tenant to
prevent you from using
water from said Spring?

Ans

He forbid us to enter his premises
and said if we did so he would
put us into eternity.

Ques 8

Please state whether or not you
were informed, and believed
at the time, that said Baker
was a man of violent temper
and believed that ^{he} would carry
his threats into execution, and
commit personal violence on

8
You or your tenant of lot no 1, if
you should attempt to use
water again from said
Spring?

This question is excepted because
irrelevant and immaterial no
such issue is raised or can
be passed on by this Court.

Ans

I had been informed ^{A. J. Prieure} ~~that~~ ^{that he was a man of violent} and be-
lieved he would carry his threats
into effect if we should attempt
use water from said Spring.

Ques 9. After these threats and informa-
tion, you applied for the
injunction was it not?

Ans

I did.

Ques 10. State whether or not there is
any other water on ^{or adjacent} ~~adjacent~~
to lot no 1, other than the Spring
on lot no 4, fit for drinking or
domestic use?

Ans

There is not.

Ques 11.

State whether or not the defendant
Fra Baker ever told you
that Mr William Stout
informed him before he
contracted for the Stout land

that you had a water
right to the Spring on lot
No 4 ² for yourself or tenants of lot No 1.
This question is objected to because
hearsay of the plaintiff and most
objectionable kind and because it
is immaterial & irrelevant.

A. L. Prineas

Ans

~~He told me that Stout said
we had a question about the
using water right where for the house
where Trusley lived. And said
Stout told him that ^{the witness} I found
out I had no right. and the question
was dropped. This was before Baker
purchased Stout's land. Baker told
me this after he had bought the
land. The Trusley house is not
on lot No 1. And I so told Baker.
And Baker did tell me that Stout
said I had a water right to Spring
on lot No 4. for myself or tenants~~

Ans

He did not tell me that Stout said
I had a water right. But on the 26
day of March 1894 Baker asked me
if I had a water right to his Spring
for Lot No 1 and told him I had.

I then asked Baker if Stout did not tell him about the water right, and Baker said that Stout told him before he purchased the land that we Stout and myself had question about using water for the house where Trusley lived. That controversy was ⁱⁿ 1891. And that Stout said I the witness found out I had no right and the matter was dropped. Trusley was then living in house on the Wynn land. And was using water only by permission of Stout. I bought the wall of the house from Stout with the understanding my tenant was to use water from the Spring on lot No 4.

mus 12,

Do you know when Mr Baker first came to look at Mr Stout's land, and if so, state whether or not your tenant of lot no. 1 was ^{then} using water from said Spring on lot 4.

This is objected to unless it be shown that Baker was notified of the claim under which the tenant used water.

A. L. Williams

Ans I dont know the time definitely,
I did not see him, but heard
of him being down there looking
at Stouts land. I suppose it was
in the 1st or 2nd week in Sept 1893
My tenant was then using water
from said Spring, or pump.

Quest 13. While Mr Baker was working
at Mr Stouts, and up to the
17th day of October 1893,

state whether or not during
said time your tenant of lot 1,
^{was} used from said Spring on lot 4.

Ans he did use water from said Spring
or pump during said time,
has examined

Quest 1. Is the Conversation before
detailed as occurring between
you & Baker, all the conver-
sation you had with him
Baker as to what Stout
said.

Ans That is all.

Quest 2 Who was present at the time, you
say Baker made the threats detailed
by you?

Ans No one except Shuler Myself & Baker.

Quest 3 Where was Baker, what was he doing and was he armed?

Ans He was near his house plowing in the field, I did not see any arms but supposed he had a pistol in his pocket.

Quest 4 Where was you going on that occasion, and how did the conversation begin in reference to the water?

Ans I was going with Shuler to put him in possession of the water, and Baker asked Shuler where he was going. I told Baker I was taking ~~Shuler~~ up there to put him in possession of the water, Baker then forbid us to go in, and said if we entered onto his possessions he would put us into eternity. ~~So asked Shuler if he was afraid of Baker and then we turned back.~~

Quest 5 In your direct-examination you say your father or your self have had the open & adverse use of this water for several years, if you ever had any possession or adverse use of the water after them to go & get it and send or allow your tenants to do so please state how it was?

Ans we had no possession of the water other than to use it.

Quest 6 Is not the spring or pump from which you got water in lot no 4 enclosed by a fence of Mr Stent's new Bakers & has it not been so enclosed for many years and was so enclosed when Butler purchased from Stent?

Ans It is in a field, and been so for ^{several years}. At the time you say, the threats were made had you told Shuler that you was going to put him in possession of the water or had you told him you was going to fix a fence?

Ans I had not told Shuler I was going to put him in possession of the water but told him I was going to fix some fence. I had told him the day before to go to the water.

Quest 7 What act or acts did you intend to do in order to put Shuler in possession of the water?

Ans I just aimed to tell him to go in. Quest 8 On that occasion was Shuler or yourself armed if so what weapons did you have?

49

Ans

I was not armed myself, and if Shuler was I did not know it

Quest 9

What is a fair cash value of lot no 1 with the water right as you claim it, and without any such right?

Objected to for reasons heretofore stated to same question. ^{B. H. Sewell, atty for Deft.}

Ans

The land on lot No 1 is worth \$25.00 per acre with the water right. And without the water right is worth \$15.00 per acre, and there is about 20 acres in lot no 1

Quest 10

~~How~~ How much do say the water right you claim for lot no 1 on lot no 4 damages the sale of lot no 4, or rather the sale of the Stout farm?

Objected to for reasons stated to same questions heretofore asked.

Ans

~~I think it~~

^{B. H. Sewell, atty for Deft.}

Ans

I think it would damage it from \$300.00 to \$400.00.

Quest 11

In its use your your tenants have made, of the water on lot no 4 has not been as much or more used by you on your other lands as on lot no 1?

This question is objected to. Because
the use of other tenants of other
lands does not affect the rights
of tenants on lot no. 1 to use
water from said spring. & this
is immaterial. B. H. Llewellyn atty
for Plff,

Ans We have not.

Quest 12 Have you not made frequent use
of water from this spring or pumps
on lot no 4, for purposes on lands
of yours other than lot no 1?

Objected for reasons above
stated. B. H. Llewellyn atty for Plff

Ans we have used some water for
other lands than lot no 1.

Quest 13 Before Mr Baker purchased and when
he was sowing wheat, at the times
you say your tenants were using
water from the pump, did ^{you} know
whether or not Mr Baker knew
they were so using under your
right or by permission of
Stent?

Ans I do not know what Mr Baker
knew about it.

And further this deponent saith
not.

R. E. Lilton

The defendant objects to the Commissioner taxing any mileage as the witnesses were not summoned and can only claim for the day called - and not for volunteer attendance. And the mileage is not properly taxable because the depositions should have been taken in the neighborhood where the case.

A. L. Pickens for

Ira Baker.

The further taking of these depositions is adjourned until Friday October the 5th 1894.

A. B. Munsey Comm'r in

Virginia

County of Lee to wit:

I A. B. Munsey a Commissioner in Chancery of the Circuit Court for Lee County Virginia do hereby certify that the foregoing depositions of Floyd Shuler J. W. Rivers, J. J. C. Flanary A. D. Litton D. S. Litton and R. E. Litton were duly taken sworn to and subscribed before me at the times and place and for the purpose in the Caption and orders hereto mentioned. Given under my hand this the 12th October 1894

A. B. Munsey Comm'r in Chancery

R E Little (18-

Depositions

Ira Baker

Filed October 12th
1894 by A B Munsey

Court in Chancery
clerk

A B Munsey
clerk

Copied in Chcy 14 hours
at 75¢ @ 10.00

Witnesses 4.34
Total Chcy 14.34

To Mr Ira Baker.

TAKE NOTICE. That I, on the 13th day of

October, 1894, at the law office of B. H. Sewell,
in the town of Jammville Lee County Virginia

will proceed to take the deposition of

Filmore Litton and others,
and will also at said time re-take the depositions
of R. E. Litton and D. S. Litton,

which, when taken, are intended to be read as evidence on my behalf in a certain suit in Equity

now pending in the Circuit Court of Lee County, State of Virginia, in which

I am plaintiff and

You are defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the
taking thereof will be adjourned from time to time, and from place to place, until completed.

This October 8th, 1894.

Very Respectfully,

R. E. Litton.
By Counsel.

R. E. Litton,
vs { Notice
Jra Baker.

Executed Oct the
9th 1894 by Delia
a true office copy
of the within Deed
to Jra Baker,
wife she being
over the age of 21
and appearing to her as free party
not found at
his place of abode
this Oct 10th 1894
L. M. Wade D. S. for
C. C. Flanary
S. L. C.

The depositions of R. E. Litton
and D. S. Litton ^{retaken}
before me A. B. Munsey a com-
missioner in chancery for the
Circuit-Court for Lee County-
Virginia, pursuant to notice
Went annexed at the law office
of B. H. Sewell in the town of
Goussville, Lee County Virginia
on the 13th day of October
1894, to be read as evidence
in behalf of R. E. Litton in a
certain suit in Equity depending
in the Circuit-Court of Lee County-
Virginia, wherein R. E. Litton
is plaintiff and Ira Baker
is defendant.

Present B. H. Sewell atty for the
No one present for the defendant.

The depositions of R. E. Litton
and D. S. Litton are retaken
in this case, because the
following questions were
forgotten and omitted to be
asked ^{of them} in their former
depositions. B. H. Sewell atty
for Plaintiff.

The witness R. E. Litton, being duly sworn,

deposes as follows:

Ques 1. In your former deposition you state that you are acquainted with lots no 1, and no 4, and the Spring in ^{in this case} Canterbury, please state whether or not the said Spring is of good quality, or how the quality is,

Ans It is of good quality, and runs all the time.

Ques 2. State whether or not you were injured or damaged by being prevented from Mr Ira Boller and your tenants of lot no 1 - from using water from the said Spring, on lot no 4.

Ans I was.

Ques 3. State whether or not you would be injured or damaged if kept or prevented from using water from said Spring.

Ans I would be

Ques 4. State whether or not you could estimate or tell the ~~any~~ extent to which you were injured or damaged from being so prevented from using water

1
From said Spring, and
to what extent you would
be injured if such prevention
continued.

ans

I ~~cannot~~ Could not tell to what
extent I was injured, and what
the extent it would be if continued.
And further this deponent saith
not.

R. E. Lillon

~~Further.~~
~~The~~ witness R. E. Lillon, being
duly sworn deposes as
follows:

Ques 1. In a former deposition
^{in this case}
yours, you state you are
acquainted with the Spring
in controversy in this case.
Now please state of what
quality of water is said Spring.
ans The quality of ^{the} water of said Spring is
good, and affords a sufficient quantity
for two families, and for more.

Ques 2. State whether or not the owner
^{mentioned in this case,}
and tenants of lot no 1, would be
injured or damaged if prevented
from using water from said

Spring on lot no. 4.
Ans They would be damaged, and as
to what extent could not tell. and
witnesses, day ^{not} Could estimate the injury if such
5⁰⁰ prevention should continue.
And further this deponent saith
not. D. S. Litton

Virginia

County of Lee to wit:

A A B Munsey a Commissioner in
Chancery for the Circuit Court for Lee
County Virginia. do hereby Certify that
the foregoing depositions of R. C. Litton
and D. S. Litton were duly retaken
sworn to and subscribed before me
at the time and place, and for the
purpose in the caption hereto men-
tioned.

Given under my hand this the 13th day
of October 1894

A B Munsey Comm. in
Chcy.

R E Litton (16

Depositions

Gra Baker

Filed October 13th
1894 by A B Munnay
Comm in Ch.

A B Munnay Clerk

Comm in Ch. 75^{cts}
witness 82
127

R. E. Litton
vs. Depositions
Ira Baker.

The depositions of R. E. Litton and
D. S. Litton retaken before
me A. B. Munsey a Commissioner in
Chancery for the Circuit Court for Lee
County Virginia pursuant to notice
hereto annexed at the law office of
B. H. Sewell in the town of Jones-
ville Lee County Virginia on the
13th day of October 1894, to be read
as evidence in behalf of R. E. Litton
in a certain suit in Equity depend-
ing in the Circuit Court of Lee County
Virginia, wherein R. E. Litton is
plaintiff and Ira Baker is defendant.

Present B. H. Sewell Atty for Plff.
No one present for the defendant.

The depositions R. E. Litton and D. S.
Litton are retaken in this case, be-

cause the following questions were forgotten and omitted to be asked them in their former depositions.

B. H. Sewell Atty for Plff.

The witness B. E. Litton being duly sworn deposes as follows:

Ques 1. On your former depositions you state that you are acquainted with lots No 1. and No 4, and the spring in controversy in this case, please state whether or not the said spring is of good quality or how the quality is.

Ans It is of good quality and runs all the time.

Ques 2 State whether or not you were injured or damaged by being prevented by Mr Ira Baker and your tenants of lot No 1, from using water from the said spring on Lot No 4.

Ans I was.

Ques 3 State whether or not you would be injured or damaged if kept or prevented from using water from said spring.

Ans I would be.

Ques 4. I whether or not you could estimate or tell the extent to which you were injured or damaged from being so prevented from using water from said spring, and to what extent you would be injured if such prevention continued?

Ans I could not tell to what extent I was injured and what the extent it would be if continued.

And further this deponent saith not.

R. S. Litton

Another witness R. S. Litton being duly sworn deposes as follows;

Ques 1. In a former deposition of yours in this case you state you are acquainted with the spring in controversy in this case, now please state of what quality of water is said spring.

Ans The quality of the water of said spring is good, and affords a sufficient quantity for two families, and for more.

Ques 2. State whether or not the owner and tenants of lot No 1, mentioned in this case would be injured or damaged if prevented from using from said

spring on lot No. 4.

Ans

They would be damaged, and as to what extent could not tell, and could not estimate the injury if such prevention should continue. And further this deponent saith not.

D. S. Litton

Virginia

County of Lee to wit:

I A. B. Munsey a Commissioner in Chancery for the Circuit Court for Lee County Virginia, do hereby certify that the foregoing depositions A. B. Litton and D. S. Litton were duly retaken sworn to and subscribed before me at the time and place, and for the purpose ⁱⁿ ~~hereto~~ the caption hereto mentioned.

Given under my hand this the 13th day of October 1894.

A. B. Munsey Comr in Chy.

R. E. Litter

AGAINST

vs Baker et al
To R. E. Litter

Take notice that on the 25th day
of February 1895, at the town of Mt. Sterling in the Law office of A. H. Kaylor in Montgomery
County, State of Kentucky I will proceed to take the deposition of myself
Wm L. Stuart

to be read as evidence on behalf of myself & Ira Baker
in a certain suit in Chancery now pending in the Circuit Court of Lee
County, State of Virginia, wherein you are
Plaintiff and I and said Ira Baker are Defendants. And if from any
cause the taking of said deposition be not begun on that day, or being begun not completed, the same will be
continued from day to day or from time to time, and, if desired, from place to place, until the same are complete. You
may attend and cross-examine if you wish.

February 18th 1895

Very Respectfully,

Wm L. Stuart

By Pruden & Sewell
Atty for defts.

We accept the legal service of the
within notice. Feb. 18th 1895.

J. F. Bullitt Jr. et al
vs
B. H. Sewell, Sheriff.

Wm J. Stewart

and
Shaloe

R. S. Ritten

The depositions of Wm L. Stent taken pursuant to notice herewith filed, at the Law office of A. A. Hagleriff in the town of ~~Mont~~ Stearling in the County of Montgomery and State of Kentucky, on the 22^d day of February 1895; and which are intended to be read on behalf of Wm L. Stent and Jora Baker in a certain suit in Chancery now pending in the Circuit Court of Lee County Virginia wherein R. E. Little is plaintiff and Jora Baker & Wm L. Stent are defendants.

Wm L. Stent one of the defendants after being duly sworn, deposes & says.

Just-1st by ~~Defendant~~

1. State your age residence & occupation & whether or not you lived in Virginia, if so when did you move to this State?

Ans. My age is 55 years - occupation - farmer. I lived formerly in Va. P.O. Occum Station I lived on the land in controversy until Dec. 1893 at which time I sold them to Jora Baker & then moved to Ky.

2. Tell all you know about the matters in controversy in this action.

Ans. I purchased lot No. 4 from Miller's wife about 18 years ago. when I purchased lot No. 4 as above stated I did not examine the partition proceedings as to lot No. 1. I did not then nor for several

years after ^{know} that ^{the plff.} they claimed any water right on lot no. 4. for the use of lot no. 1. I never agreed for Plff. to get water as a matter of right on lot no. 4. but only allowed him to use water from said lot as a matter of neighborly courtesy. The first time Plff. ever asserted any claim to the right of water on said lot was in 1891 when a controversy arose as to Plffs. right to the use of said water. When this controversy arose in 1891 as stated above Plff. claimed the right of water for a house on other land. In about 1890 I put in pipes & run the water from the spring to my house where I then lived & Plff. used as much or more water for their other lands as they did for lot no. 1.

The first time I ever examined the partition proceedings of lot no. 1. was about 1894

X Examined by deft.

1. State whether or not you told Mrs Ida Baker before you sold him your lands or farm mentioned in this case or at the time of the sale that R.E. Litten the Plff. had a water right to the springs on lot no. 4. in controversy in this case
- Ans. I did not. because I did not consider that he ^{Plff.} had any such right

Q Did you not tell said Baker that the Plff. had a water right to said

Spring before he paid you any or all
of the purchase money for said land
and I did not.

And for that said the oath

W. L. Stout

County of Montgomery State Kentucky to wit.
I H. C. Howell Justice of Peace for Montgomery Co. Ky
do certify that the foregoing depositions
of Wm L. Stout were, on the foregoing
pages were duly taken sworn to and
subscribed before me, at the times
and places and in the manner in the
Caption mentioned.

H. C. Howell J. P. M. C.

Wm. L. Stout¹⁸

Ads } Depos.

R. E. Litter

Received by mail in good
condition and filed Feb'y
The 25th 1895.

A B Munsey Clerk

The depositions of Wm. L. Stout taken pursuant to notice herewith filed at the law office of A. A. Hazlerigg in the town of Mt Sterling in the County of Montgomery and State of Kentucky, on the 22^d day of February 1895, and which are intended to be read on behalf of Wm. L. Stout and Ira Baker in a certain suit in Chancery now pending in the Circuit Court of Lee County Virginia wherein A. C. Litton is plaintiff and Ira Baker and Wm. L. Stout are defendants.

Wm. L. Stout one of the defendants after being duly sworn, deposes & says;

1. State your age residence & occupation & whether or not you lived in Virginia

if so when did you move to this state?

Ans

My age is 56 years - occupation farmer. I lived formerly in Va - P.O. Yocum Station. I lived on the land in controversy until December 1893 at which time I sold them to Isa Baker and then moved to Ky.

2. Tell all you know about the matter in controversy in this action.

Ans

I purchased lot No. 4 from Miller & wife about 18 years ago - when I purchased lot No. 4 as above stated I did not examine partition proceedings as to lot No. 1. I did not then nor for several years after know that the plff. claimed any water right on lot No. 4. for the use of lot No. 1. I never agreed for Plff to get water as a matter of right on lot No. 4. but only allowed him to use water from said lot as a matter of neighborly curtesy. The first time Plff ever asserted any claim to the right of water on said lot was in 1891 when a controversy arose as to Plffs right to the use of said

water- when the controversy arose in 1891 as stated above Plff claimed the right of water for a home on other land.

In about 1890 I put in pipes and run the water from the spring to my house where I then lived & Plff used as much or more water for these other lands as they did for lot No. 1.

The first time I ever examined the partition proceedings of lot No. 1. was about 1894.

X Examined by deft.

1. State whether or not you told Mr Ora Baker before you sold him your lands or farm mentioned in this case, or at the time of the sale that C. E. Litton the Plff. had a water right to the spring on lot No 4 in controversy in this case.

Ans I did not because I did not consider that he Plff had any such right.

2. Did you not tell said Baker that the Plff. had a water right to said spring before he paid you any or all of the purchase money for said land

Ans I did not.

And further saith not W. L. Stout.

County of Montgomery State Kentucky to wit:

I H. C. Howell Justice of the Peace for Montgomery Co. Ky do certify that the foregoing depositions of Wm. L. Stout were on the foregoing pages were duly taken sworn to and subscribed before me at the times and places and in the manner in the Caption mentioned.

H. C. Howell J. P. M. C.

Wm. L. Stout 18
ado 3 Depos.

R. C. Little

The depositions of Wm L. Stout
and Ira Baker, taken at the law
office of A. L. Pridemore in the
town of Jonesville Lee County
Virginia, on the 3^d day of Nov.
1894, pursuant to notice here-
to attached and which are intended
to be read as evidence of Ira
Baker in a certain suit in
Chancery now pending in the
Circuit Court of Lee County
Virginia wherein Robert E.
Litten is plaintiff and said
Ira Baker defendant.

Ira Baker a witness of lawful
age after being duly sworn
deposes and says:
Test 1st.

by defendant Counsel,
Please state whether or not, you
are the defendant in this cause
if you answer yes, state whether
or not before or at the time you
purchased the land you live on
from Wm L. Stout you had any
notice whatever of the claim now
made in this suit - by the party to
take one sixth from your spring
as a matter of right? state all
you may know about the transaction?
This question is objected to. Because
it is leading, and because records

of the paper show notice, Justin
does not state whether actual
notice or otherwise B/H. Sewell atty
Ans/- Yes, I am the defendant in
this suit. At the time I pur-
chased the land, from Wm L Stout,
a part of which is known as Lot
No. 4, on which the Spring in
controversy is situated. I examined
& had examined, Mr Stout's title
papers to the land I purchased
from him & among them were
the title papers to Lot No. 4. I
saw & was advised from said
title papers that there was no
incumbrance on Lot No. 4 & that
Mr. Stout, so far as I could see
was in the full possession
of it. I had no notice what-
ever of the Plaintiff's claim, set
out in his Bill, at the time
I purchased the land. At the time
~~the title was~~ I was at Mr Stout's
house, sowing wheat, the fall after
I had purchased the land. Mr.
Stout said to me that if Mr
Littton put any body there I didn't
want to use water, that for
me to put them out, that Littton
had no right there, that Littton
& he (Stout) had had a little trouble
& Littton had gone & examined his

papers & he had no title & had
just dropped it & took them
just getting water gratis. I
believe it & know no better till
in March following. On the 22^d
day of March Mr Harvey Young
& I were going to Big Stone
Gap, & he informed me that
Mr. Little claimed a water right
to my spring. I saw Mr. Little
a few days afterwards & he told
me that he did have a right
to that spring. I asked him to
set up his title, that I had bought
it, believing that I owned it
clear of all encumbrances. This
is all the notice I had. I had
no notice before the purchase,
& this is all I had afterwards.

The above answer is objected
to in the following portions:
1st The investigation by the referee
and of the records of Stout's title
and his advice is immaterial
& irrelevant.

2^d The records of Plaintiff's title
show the water right, and cannot be
contradicted by oral testimony,
3^d What Mr Stout said is hearsay,
Stout is here to speak for himself,
and such parts of the answer as
is hearsay is opposed to. A. Hewell
for Plff

Please state, whether or not at the time the peff and Floyd Shuller came to take possession of the spring as they state, you were armed or made any threats? state what you did say & whether or this occurred after you had requested Mr Little to set up his right if he had any?

Ans. 2. I had no arms. This was some 5 or 6 weeks after I asked Mr. Little to set up his title. All the threats I made was I ~~told them~~ ^{will} keep them out off there till the law said for them to go in.

Cross-Examination.

Ques 1. When you came to look at the Stout land with a view to purchase, state whether or not Mr R.E. Little then had a tenant living where Floyd Shuller now lives?

Ans 1. I think he did.

Ques 2. State ~~whether or not~~ who this tenant was, and whether or not you saw him and his family getting water from the spring in question.

Ans. Geo Insley, I believe was the man. I did not see him & family getting water from the spring.

Ques 3. At any time before you purchased, or at any time before Mr Stout made

you a deed to the land, state whether or you ever saw Mr Linton's tenants of lot no 1, using water from the Spring in Outroversy.

Ans 2. I don't remember to have seen any of them getting water before the deed was made to me by Stout.

Ans 3. Was the deed delivered to you before you sowed wheat?

Ans 3. I think I got it when I came to sow wheat, but do not know for certain.

Ans 4. State as near as you can when you sowed wheat?

Ans. 4. It was in the fall after I bought the land, before the 1st of December of that fall.

Ans 5. On your return from looking at Mr Stout's land, did you not stay all night with Frank Willis, and while there in a conversation with said Willis was Mr Linton's water right to said Spring mentioned?

Ans 5. Yes, I stayed all night with Willis. He did not tell me any thing about Linton's water right.

Ans 6. Did you sow wheat before you moved on the Stout land or after you moved?

Ans. 6. Before I moved.

Ans 7. After you told Mr Linton that you would

keep them out as you have stated,
and before the institution of this suit,
at Big Stone Gap, in a conversation
with W. E. Harris, did you not say
to him, that from what you said
of it that he ^{Sittum} thought
you had a pistol?

Ans. No Sir. I was ploughing &
in my shirt sleeves. I had
no pistol then & ~~do not~~ carry
am not in the habit of
carrying pistols.

Ques 8 When Mr Sittum & Shuler were going
up the road at the time you told them
you would keep them out, why
was ^{it} you asked Shuler where
they were going.

Ans. 8 Because, I mis-trusted some-
thing.

Ques 9 On what occasion did you mean
to keep them from using water
from said Spring, and in what way
did you intend to prevent them from
using water from said Spring?

Ans 9. Yes, sir, I mean to keep them
out until the law allowed them
to go in. I don't know that I
had in mind at that time any
particular way to keep them
out. I thought I had the law
on my side & had a right
to protect my possessions.

Ques. At that time had any legal proceedings been instituted by you or Mr. Bilton to settle the controversy about this Spring?

Ans. None had been instituted by me or none by Mr. Bilton so far as I know.

And further this witness saith
wch. J. A. Baker

Virginia, Lee County, to wit.

I, D. C. Sewell, a notary Public for the county of ^{apponins} Lee in the state of Virginia, do certify that the foregoing deposition of Ira Baker was duly taken, subscribed & sworn to before me ^{at the time} for the purpose in the caption mentioned. Given under my hand, this 3^d day of Oct. 1894.

D. C. Sewell N. P.
H

Ira Baker (17)

Ads } Deposition.

R. E. Litton.

Received from Notary
before whom taken
& filed this Oct. 3^d
1894..

A. B. Munsey Clerk

Not. Fee.... 2 ⁵⁰

Ira Baker

Advs 3 Depositions

R. B. Litton

The depositions of Wm. L. Stout and Ira Baker taken at the law office of A. B. Pridemore in the town of Jonesville Lee County Virginia, on the 3rd day of Nov. 1894, pursuant to notice hereto attached and which are intended to be read as evidence of Ira Baker in a certain suit in chancery now pending in the circuit court of Lee County Virginia wherein Robert B. Litton is plaintiff and said Ira Baker defendant.

Ira Baker a witness of lawful age after being duly sworn deposes and says:

Quest 1.st by defendants Counsel.

Please state whether or not, you

are the defendant in this case, if you answer yes, state whether or not before or at the time you purchased the land you live on from Wm. L. Stout you had any notice whatever of the claim now made in this suit by the Plff to take and use water from your spring as a matter of right?

State all you may know about the transaction?

This question is objected to, Because it is leading, and Because records of title papers show notice, question does not state whether actual notice or otherwise. B. H. Sewell Atty for Plff.

Ans!- Yes, I am the defendant in this suit. At the time I purchased the land from Wm. L. Stout a part of which is known as lot No 4, on which the spring in controversy is situated. I Examined and had Examined Mr Stout's title papers to the land I purchased from him & among them were the title papers to Lot No 4. I saw I was advised from

said title papers that there was no encumbrance on lot No 4 & that Mr. Stout, so far as I could see was in the full possession of it. I had no notice whatever of the Plaintiff's Claim set out in his bill, at the time I purchased the land. At the time I was at Mr. Stout's house sowing wheat, the fall after I had purchased the land. Mr. Stout said to me that if Mr. Litton put any body there I didn't want to use water, that for me to put them out, that Litton had no right there, that Litton and he (Stout) had had a little trouble & Litton had gone and examined his papers & he had no title & had just dropped it. & that they just getting water gratis. I believe it & knew no better till in March following. On the 22^d day of March Mr. Harvey Young and I were going to Big Stone Gap, & he informed me that Mr. Litton claimed a water right to my spring. I saw Mr. Litton a few days after -

wards & he told me that he did have a right to that spring. I asked him to set up his title, that I had bought it believing that I owned it clear of all encumbrances.

This is all the notice I had.

I had no notice before the purchase, & this all I had afterwards.

The above answer is objected to in the following particulars:

1.st The investigation by the defendant of the records of Stout's title and his advice is immaterial & irrelevant.

2.^d The records of plaintiff's title show the water right, and cannot be contradicted by parol testimony.

3.rd What Mr Stout said is hearsay, Stout is here to speak for himself, and such parts of the answer as is hearsay is objected to.

B. H. Sewell Atty for Plff.

Please state, whether or not at the time the plff and Floyd Shuller came to take possession of the spring as they state, you was armed or made any threats? State what you did say &

whether this occurred after you had requested Mr. Litton to set up his right if he had any?

Ans 2. I had no arms. This was some 5 or 6 weeks after I asked Mr. Litton to set up his title. All the threats I made I told them will keep them out off there till the law said for them to go in.

Cross-Examination.

Ques 1. When you came to look at the Stout land with a view to purchase, state whether or not Mr. R. B. Litton then had a tenant living where Floyd Shuler now lives?

Ans 1. I think he did.

Ques 2. State who this tenant was, and whether or not you saw him and his family getting water from the spring in controversy.

Ans. Geo Trusley. I believe was the man. I did not see him & family getting water from the spring.

Ques 3 At any time before you purchased, or at any time before Mr Stout made you a deed to the land, state whether or you ever saw Mr Littons tenants of lot No 1, using water

from the spring in controversy.

Ans 2 I dont remember to have seen any of them getting water before the deed was made to me by Stout.

Ques 4. Was the deed delivered to you before you sowed wheat?

Ans 3. I think I got it when I came to sow wheat but do not know for certain.

Ques 4. State as near as you can when you sowed wheat?

Ans 4. It was in the fall after I bought the land, before the 1st of December of that fall.

Ques 5 On your return from looking at Mr. Stouts land, did you not stay all night with Frank Willis, and while there in a conversation with said Willis was Mr Littons water right to said spring mentioned.

Ans 5 Yes I stayed all night with Willis. He did not tell me any thing about Litton water right.

Ques 6 Did you sow wheat before you moved on the Stout land or after you moved.

Ans 6. Before I moved.

Ques 7 After you told Mr Litton that you would keep them out as you have stated, and before the institution of of this suit at Big Stone Gap, in a conversation with W. B. Harris did you not say to him, that from what you said to Litton that he Litton thought you had a pistol?

Ans No Sir. I was plowing and in my shirt sleeves. I had no pistol then I am not in the habit of carrying pistols

Ques 8. When Mr. Stout and Shuler were going up the road at the time you told them you would keep them out, why was it you asked Shuler where they were going.

Ans 8 Because, I mistrusted something.

Ques 9. On that occasion did you mean to keep them from using water from said spring, and in what way did you intend to prevent them from using water from said spring?

Ans 9 Yes Sir. I meant to keep them out until the law allowed them to go in. I didn't know that I had in mind at that time any

particular way to keep them out.

I thought I had the law on my side
& had a right to protect my possessions.

Ques 10. At that time had any legal proceedings
been instituted by you or Mr. Litton to
settle the controveray about this spring?

Ans None had been instituted by me & none
by Mr Litton so far as I know.

And further this witness saith not.

Ira Baker

Virginia Lee County to wit:

I, D. C. Sewell a notary Public
for the County aforesaid in the state
of Virginia, do certify that the fore-
going deposition of Ira Baker
was duly taken subscribed &
sworn to before me at the time
and for the purpose in the
Caption mentioned.

Given under my hand, this 3rd day
Oct. 1894

D. C. Sewell, N.P.

Virginia

See county to wit:

This day A B Munsey personally appeared before me and made oath that he has no recollection of having any conversation with B H Sewell in regard to Bra Baker filing his answer to R. E. Littons Bill and ~~he~~ further states that the endorsement ~~is~~ made on the answer that it was filed on the 21st day of May is correct to the best of his knowledge and belief and that the papers have been in my office since that time.

J. T. F. Richmond Clerk

On the day, the answer shows it was filed, I gave the answer & Bills & papers in the case to the Clerk of the Circuit Court then in his office and have not since had the papers in my possession or even saw them up to this day. June 4th 1894

A L Pondexter

Sworn to before me this the 4th day of June 1894

A B Munsey, Clk

A. B. m
Baker
23 Affidant
R. E. Litton
June 4th, 1894

Virginia Sec County Court:

This day B.H. Sewell of Counsel for R.E. Little, ~~this day~~ personally appeared before the undersigned, and made oath that his best recollection ^{and belief} is that since the 21st day of May 1894, he has ^{not} ~~been~~ ^{known} by the Clerk of the Court if an answer had been filed in the Chancery Case of R.E. Little vs Ira. Baker, and that he was informed that it had not been filed, and with this understanding informed this associate Counsel, and sent R.E. Little word that it had not been filed, and this is the reason ~~the~~ further preparation had been made for preparing the case ~~ready~~ for trial, thinking that the defendant was waiting till Court to file his answer. And he further states that in his opinion that it was absolutely

necessary to take the
depositions of several
witnesses before the
plaintiff could safely
go to trial, and that had
he known that an answer
had been filed, steps
would have been taken
to take said depositions
& prepare the case for
trial for the plaintiff.
Given under my hand
this the 4th day of
June 1894.

J. T. F. Richmond Clerk

RE Lytton
Affidavit
re } Continuance

vs Baker

D 5815
D 531

1 This Indenture made and entered into this,
2 23rd day of December, in the year of our
3 Lord 1867, by and between, Fleming H
4 Shelton & his wife Sarah J. Shelton, of the County
5 of Gray and State of Kentucky, of the first
6 part and Jell S. Cox, of the County of Lee
7 and State of Virginia, of the other or second
8 part, Witnesseth, That for and in consid-
9 eration of the sum of three hundred and
10 fifty dollars, lawful money of the United
11 States, by the party of the second part paid
12 to the parties of the first part, the receipt
13 whereof is hereby acknowledged, the said
14 parties of the first part do grant, bargain,
15 and sell, and by these presents, alien, convey,
16 and confirm unto the party of the second
17 part his heirs and assigns forever, one
18 undivided seventh part, and all the interest
19 that may hereafter accrue to us or either
20 of us in and to a certain tract or parcel of
21 land, situate in Lee County in Yocum Sta-
22 tion that descended to the heirs of Jere-
23 miah Skagg deceased, known and called
24 the home tract of land of the said Jeremiah
25 Skagg deceased, hereby ~~including~~ excluding from
26 this conveyance the tract or parcel of land
27 said Jeremiah Skagg bought of Hobbs, to
28 have and to hold the afore said seventh
29 part of the said tract or parcel of land call-
30 ed the home tract of the said Jeremiah Skagg
31 with all and singular, the rights and appur-
32 tenances, thereto belonging, unto the said

1 party of the second part, his heirs and assigns
2 forever, free from the parties of the first part
3 their heirs, and assigns forever, and the said
4 parties of the first part do for themselves, their
5 heirs, and assigns forever warrant and agree
6 agree to defend the title to the said undivided
7 seventh part of the said tract of land. hereby con-
8 veyed unto the said party of the second part
9 his heirs and assigns forever against all
10 claims, titles, or rights whatsoever and
11 we, the parties of the first part do further
12 covenant to and with the party of the second
13 part, his heirs and assigns that we have
14 a good and lawful title and right to convey
15 the one seventh part of the said tract
16 of land. In witness whereof we, the
17 said parties of the first part, have here-
18 unto set our hands and affixed our
19 seals this day and year herein first written

20 Fleming Shelton Seal
21 Sarah Shelton Seal

22 Commonwealth of Kentucky, Knox County,
23 I, the undersigned, subscriber, one of the
24 Commonwealth's Justices of the Peace in
25 and for the County & in the Commonwealth
26 of said, do certify that Fleming H.
27 Shelton, whose name is signed to the foregoing
28 deed dated the 23rd day of December
29 1867, has this day acknowledged the same
30 before me, in my said County, Given under
31 my hand this 29th day of May 1868

32 (Signed) Minor Bryant J.P.C.

1 Commonwealth of Kentucky, Knox County, to wit:
2 Wee, the undersigned Subscribers, two of the Com-
3 monwealths Justices of the Peace, in and for the
4 County of Knox, and Commonwealth of Kentucky,
5 do certify that Sarah J. Shelton, the wife of Flem-
6 ming H. Shelton, whose names are signed ^{to the writ-}
7 ing above bearing date on the 23rd day of Dec-
8 ember 1867, personally appeared before us
9 in our said county, and being examined by
10 us privily and apart from her husband, and
11 having the writing afore said fully explained
12 to her, she, the said Sarah J. Shelton, acknowl-
13 edged the said writing to her act and deede
14 and declared that she had willingly
15 executed the same, and does not to retract
16 it. Given under our hands this, 29th day of
17 May 1868.

18 (Signed) Minor Bryant, J. P. K. C.
19 " Jacob Goshe J. P. K. C.

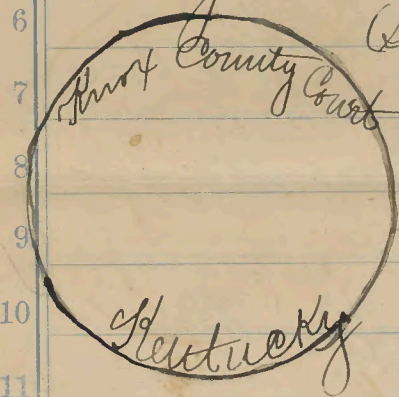
20 State of Kentucky } ss
21 Knox County }

22 I, John H. Davis, Clerk of the County
23 Court within and for the County and State
24 aforesaid, do hereby certify that Minor
25 Bryant & Jacob Goshe Esqr, before whom
26 the acknowledgment of the foregoing deed was
27 made (from Fleming Shelton & wife to Joel S. Boy)
28 and who have thereunto signed their names,
29 was at the time of so doing acting Justice
30 of the Peace within and for the County and
31 State above named. duly elected, qualified,
32 and sworn, that all their official acts as

1 are entitled to full faith and credit, and
2 that their said signatures are genuine.

3 In testimony whereof, I have hereunto set
4 my hand and official seal, this 29th day of
5 May 1868.

6 (Signed) John H. Davis Clerk
7 By H. H. Hunter D. C.
8



12 Court of the County of Surry, Clerk's office, the 30th day of
13 September 1868, This Indenture of bargain and
14 sale for land between Fleming H. Shelton and
15 wife, of the County of Surry, in the State of
16 Kentucky, of the first part, and Joel S. Cox
17 of the County of Lee and State of Virginia,
18 of the other part, being duly stamped,
19 is admitted to record upon the certificate
20 of John H. Davis, Clerk of the County
21 Court of said County of Surry in the State
22 of Kentucky.

23 Teste: Henry J. Morgan, Clerk
24 A Copy Teste: A. R. Richardson, Clerk
25
26
27

2nd

Joel S. Cox. 2nd
Copy
Filed

Fleming Shelton

"A"

100

1 This deed made & entered into this, 25th, day of
DB15 2 July 1868 by and between Joel S. Cox. Norma
P529 3 Cox, his wife, of the County of Lee and State
4 of Virginia of the first part, and Dixon S.
5 Litton of the County and State aforesaid
6 of the second part. Witnesseth, That the par-
7 ties of the first part for and in consideration
8 of the sum of three hundred and seventy five
9 Dollars, one hundred and eighty dollars
10 of which has been paid, and for the residue
11 whereof a lien is hereby retained on the land
12 hereby conveyed, hath granted, bargained,
13 and sold, and doth by these presents alien,
14 convey & confirm unto the party of the second
15 part, his heirs and assigns, forever, a cer-
16 tain tract or parcel of land situate, lying
17 and being in Lee County in the State of Vir-
18 ginia, and bounded as follows, to wit: one
19 undivided seventh part, and all the interest
20 that may hereafter descend to or accrue
21 to Sarah J. Shelton & Fleming Shelton or either
22 of them in and to a certain tract or parcel
23 of land situate in Lee County in former
24 Station that descended to the heirs of Jeremiah
25 Skaggs deceased from said Jeremiah Skaggs,
26 known and called the home tract of land,
27 that belonged to the said Skaggs, hereby
28 excluding from this conveyance the tract
29 or parcel of land said Jeremiah Skaggs
30 bought of Hobbs, to have and to hold
31 the said tract or parcel of land hereby con-
32 veyed unto the said party of the second

1 part, his heirs, and assigns forever, free
2 from the parties of the first part, their heirs and
3 assigns forever, and the said parties of the
4 first part do for themselves, their heirs, and
5 assigns, the said tract or parcel of land,
6 unto the party of the second part, his
7 heirs & assigns forever. Warrant and
8 defend against all claims or persons or
9 titles whatsoever, in witness whereof we the
10 parties of the first part, have hereunto
11 signed our names and affixed our seals
12 this day and date herein before written

13 Joel S. Cox Seal
14 Naoma ^{her} Cox ^{mark} Seal

15 State of Virginia, Lee County, to wit:-

16 I, Joshua A. Redwine, a Jus-
17 tice of the Peace in and for said County, do
18 certify that Joel S. Cox, whose name is signed
19 to the foregoing deed, dated the 25th day
20 of July, 1868, has this day acknowledged the
21 same before me in my said County. Given un-
22 der my hand this 28th day of July 1868
23 J. A. Redwine J.P. & C.

24 State of Virginia, Lee County, to wit:- We
25 Joshua A. Redwine and George W. Young, two
26 of the Commonwealth's Justices in and for
27 the County of Lee aforesaid, do certify that
28 Naoma Cox, the wife of Joel S. Cox, whose names
29 are signed to the writing above, bearing date
30 the 25th day of July 1868, personally appeared
31 before us in our said County and being exam-
32 ined by us privily and apart from her hus-

1 band and having the writing aforesaid
2 fully explained to her, she, the said Nanna
3 Coy, acknowledged the said writing to be
4 her act and deed, and declared that
5 she had willingly executed the same, and
6 does not wish to retract it. Given from un-
7 der our hands this 28th day of July 1868.

8 J. W. Redwine J.P., C.
9 George W. Young J.P., C.

10
11 Rose County Court, clerk's office, the 30th
12 day of September 1868, This indenture
13 of Bargain and Sale for land between
14 Joel J. Coy and Nanna Coy, his wife,
15 of the first part, and Nixon S. Cotton of
16 the other part, all of the County of Rose
17 and State of Virginia, being duly stamped
18 is admitted to record upon the certifi-
19 cates of two Justices of the Peace in and the County
20 and State aforesaid

21 Teste - Henry J. Morgan, clerk

22 A Copy - Teste: J. V. F. Richmond clerk
23
24
25
26
27
28
29
30
31
32

3rd

Dixon S. Lutton^B
Dm { Oa py
Dec 26, 1918

Jail S. Cox + wife

"B"

C 60

1 Virginia

SS 15
P 638

2 At a Court of quarter sessions Cont-
3 inued and held for Lee County, at the Court
4 house thereof, on Friday, the 21st day of
5 August 1868.

6 Joel S. Cox

Plaintiff

7 against

8 Jeremiah Scagg heirs et als, Defendants } In

9 This cause is set for trial on the motion of the
10 Complainant, and thereupon Fleuning
11 H. Shelton and Sarah J. Shelton entered
12 their appearance to the Bill, and it app-
13 earing that Martha Ann Burse and her
14 husband Stephen Burse, Polly Scagg,
15 John Scagg, Minerva Scagg, Rebecca Scagg,
16 and Elizabeth Scagg are infants, therefore
17 Henry J. Morgan is appointed Guardian ad
18 litem for them, who thereupon accepted
19 said appointment, and filed his answer
20 for them, and by consent the following
21 decree is rendered, It is adjudged, ordered
22 and decreed that the lands in the Bill
23 ^{and exhibits} mentioned be partitioned between the Com-
24 plainant and the other heirs of Jeremiah
25 Scagg named in the Bill except Shelton and
26 wife, they having sold and conveyed their
27 interest to the Complainant, their share is to
28 be laid out to him, Carr Bailey, David Cox,
29 and John Reason are appointed Commissioners
30 to make said partition, they are ordered to
31 give to the parties, except Shelton and wife, rea-
32 sonable notice of the time they will execute

1 this decree, after which they will proceed to
2 divide the said lands in the Bill mentioned
3 into seven equal lots or shares in value having
4 due regard to quality and quantity, and when
5 so divided they will then proceed to allot to
6 Complainant one share, and to Martha Ann
7 Burrise one share, and to Polly Scaggs one share
8 and to John Scaggs one share and to Minerva
9 Scaggs one share, and to Rebecca Scaggs one
10 share, and to Elizabeth Scaggs one share,
11 It is agreed that Dixon S. Lutton, has bought
12 Complainant's interest and is entitled to his
13 share, and that said Lutton owns other lands
14 adjoining the lands to be partitioned therefore
15 the said Commissioners are ordered to (if it
16 can be done without prejudice to the other
17 co-tenants) lay out the lot of the Complainant
18 adjoining to the lands of the said Dixon S.
19 Lutton, and if it can be done without preju-
20 dice to the other heirs, the share of the youngest
21 heir Elizabeth is to be laid out adjoining her
22 mother's dower. The said Commissioners are re-
23 quired to make a plain plat of the whole land
24 divided, and also showing the several lots or
25 shares herein required to be laid out, and
26 the metes, and bounds thereof, and report
27 plainly which of said lots are allotted to
28 each tenant to which they may allot it.
29 It is further adjudged, decreed and
30 ordered that the Complainant's wife
31 is entitled to receive of the Guardians
32 John Scaggs, William Andre, and Samuel

1 Payke the one seventh part of the rents for
2 which the lands rented for the years it has
3 been rented since the complainant bought
4 the share of Shelton and wife subject to a
5 Credit, however, for one seventh of the necessary
6 and needful repairs made by the Guardian
7 thereon. It is, therefore, ordered and decreed
8 that the said Commissioners, herein before
9 named, after giving the parties herein before
10 named, except Shelton and wife due notice, do
11 proceed to ascertain in what year complain-
12 ant bought the share of Shelton and wife, then
13 ascertain what rents have fallen due on
14 said lands since complainant bought
15 said interest, and report the same, then they
16 will ascertain and report what the Guar-
17 dians have expended for necessary repairs
18 to the said lands since the complainant
19 bought the share of Shelton and wife, or if
20 he bought it after it had been rented
21 and before the rent was due, and if any repairs
22 were made in the year he bought it, after it
23 was rented and before he bought it, to as-
24 ertain and report how much, to enable them to
25 execute this Decree they have power given them
26 to summon such witnesses as either party may
27 require, or as they may think material, and
28 to swear them and force them to give evidence con-
29 cerning the premises, and they also have power
30 to summon any one having any deed, or oth-
31 er writing in his possession that is material
32 and pertinent to produce before them the same.

1 and they hereby have power given to do all
2 acts necessary to be done to enable them
3 fully to discharge the duties herein required
4 of them to be done, and this Cause is contin-
5 ued.

6
7 The ~~Commissioners~~ appointed by the foregoing
8 Decree to partition the lands in the Bill men-
9 tioned between the Complainant and the other
10 heirs of Jeremiah Scagg named in the Bill,
11 except Shelton & wife in the manner set forth in
12 said decree, on the 19th of October 1868 filed their
13 report and plat of the lands so divided, which
14 report is in the words and figures following,
15 to wit:—

16
17 Joel S. Cox
18 Against

Deft

19 Jeremiah Scagg Heirs et als Defts.

20 Pursuant to an order of the County Court of
21 Lee County rendered 21st August 1868
22 in the above named Cause the undersigned,
who was appointed by said

} In Chancery

Decree Commissioners
For the purposes named
in said decree, have
executed said decree
and beg leave to report.
We have partitioned
the land in the
exhibits men-
tioned in the
decree.

before
in interest
and said
into seven
value having
and quantity and
couple amount for the
Littre, who, it is a go-
the complainants interest,
to his share, one share which
is designated as Lot No. 1, Which is bounded
as follows, to wit:- Beginning at a Beech and
Hickory, Corner to said Littres land, and
with lines thereof N 78° W 53 poles to a stake,
thence due South one pole to a stake, thence
N 76 1/2° W 9 1/2 poles to a stake in the road
thence N 56° E 66 poles up a branch & dividing
the same to a stake, thence N 64° E 19 poles to
a stake in said road and with the same N 53°
E 10 poles to a stake and with the same S 60° W
57 1/2 poles, to the Beginning, containing 20 acres
be the same more or less, See Fig 3, 4, 5, 33, 34, 35,
25, 26, &c.

And we have allotted to Martha Ann Burde
one share which is designated as Lot
No 2^d which lot No 2^d is bounded as follows,
to wit:- Beginning at a stake, Corner to Lot
No 3 and with lines thereof N 34° W 57 poles
to a hickory on a flat, thence N 68° W 24 poles
to a stake, corner to Hobbs land & with lines
of the same S 40° W 64 poles to a white oak

1 thence 70° W 8 poles to a Stake Corner to lot No
2 4 & with a line thereof $S 34^{\circ}$ E 140 poles to the Beg-
3 inning, Containing 16 acres be the same more
4 or less, See Fig 27. 35. 25. 24. 17. 16. 28. 27. And we
5 have allotted to Minerva Scaggs one share,
6 which is designated as lot No 6, which is bound-
7 ed as follows, to wit: - Beginning at a Stake on
8 the Widows lower line & corner to lot No 7 &
9 with a line of the latter $N 35^{\circ}$ W 120 poles to a
10 Stake on the locust tree line near the top of a
11 spur, thence with the said locust tree line
12 $S 55^{\circ}$ W 25 poles to a Stake near where Ab-
13 Whisman now lives, Corner to lot No 5 & with a
14 line of the same $S 35^{\circ}$ E 100 poles to a Stake Corner
15 to lot No 5 & lot No 1 & with a line of the latter,
16 $S 40^{\circ}$ E 46 poles to a Stake on Dix on E. Littons line
17 & with the same $N 60^{\circ}$ E $3\frac{1}{2}$ poles to a Stake, Corner
18 to the said lower lands & with a line of the
19 latter North 32 poles to the Beginning, Contain-
20 ing 17 acres, be the same more or less See Fig 22.
21 23, 24, 25, 26, 27, 22. And we have allotted to
22 Elizabeth Scaggs one share which is design-
23 ated as lot No 7, which is bounded as fol-
24 lows, to wit: - Beginning at a Beech on the East
25 Side of the Big Branch, Corner to the Widows lands,
26 & with the lines thereof $S 25^{\circ}$ E 16 poles to a Hickory
27 Stump by said branch, thence $N 48^{\circ}$ E 25 poles
28 to a Beech, thence $S 21^{\circ}$ E 46 poles to a Stake
29 in the road where the Branch crosses the
30 same, thence due South 42 poles to a Stake,
31 corner to lot No 6 & with a line of the same
32 $N 35^{\circ}$ W 120 poles to a Stake near the top of

(5)

1 and the other heirs of Jeremiah Scaggs
2 named in the Bill, except Shelton and wife
Having sold and Conveyed their interest
Complainant, We have divided Said
the Bill mentioned into seven
or shares in value having
equality and quantity and
to Complainant for the
Sittou, who, it is a gr
Complainants interest,
share which
is bounded
each and

1 Stump and Rock, thence S 24 E 9 1/2 poles to a stake,
2 corner to Dixon & Lottens land, and with lines
3 thereof S 88° E 54 poles to a stake, thence S 76 1/2
4 E 19 1/2 poles to a stake corner to lot No 1 & with
5 a line thereof N 56° E 18 poles to the Beginning,
6 containing 18 acres, be the same more or less,
7 See Fig 31, 32, 9, 8, 7, 6, 35, 31, and in addition to the
8 above we have allotted to the said Martha
9 Ann Burke another piece of land which
10 is represented by Fig 10, 11, 12, 14, 36, 10, and
11 is bounded as follows, to wit: - Beginning at
12 a Beech and Hickory, corner to lot No 3,
13 and also corner to Hobbs land, and with
14 the lines of the latter N 86 W 50 poles to a Hickory
15 and maple N 57° W 80 poles to a stake corner
16 to James Flanerys land and with a line
17 thereof North 13 poles to a Gum near the Noel
18 field on Dixon & Lottens line & with the same
19 S 57 E 60 poles to a chestnut & white oak, thence
20 S 86° E. 76 poles to a stake, corner to lot No 3 &
21 with a line of the same due South 13 poles to the
22 Beginning, containing 9 acres, be the same more
23 or less. And we have allotted to Polly Seaggs
24 one share which is designated, as lot No
25 3, which is bounded as follows - to wit: Be-
26 ginning at a stake corner to lot No 2, and
27 on a line of lot No 1 & with the same N 36°
28 E 26 poles to a stake, corner to lot No 4, and
29 with a line of the same N 34 W 140 poles to a
30 stake on Hobbs line & with lines thereof S 70
31 W 22 poles to 3 poplars on a hill-side above
32 the head of a spring N 86 W 30 poles to a stake

1 corner to part of lot No 2 & with a line of the
2 same due South 13 poles to a Beech and Hickory
3 corner to said Hobbs land & with a line of the
4 same S 57° E 78 poles, to a stake, corner to lot No
5 2 & with lines thereof S 68° E 24 poles to a poplar
6 on a flat, thence S 34° E 57 poles to the Begin-
7 ning, containing 38 acres, be the same more
8 or less. See Fig 3, 30, 29, 15, 36, 10, 32, 31. And we
9 have allotted to John Scagg's one share, which
10 is designated as lot No 4, which is bounded
11 as follows to wit: - Beginning at a stake, corner
12 to lot No 3 and on a line of lot No 1 & with
13 the same N 56° E 22 poles to a stake, thence
14 N 64° E 3 poles to a stake, corner to lot No 5,
15 & with a line of the same N 34° W 140 poles to
16 a stake on Hobbs line & with the same S 70°
17 W 25 poles to a stake, corner to lot No 3
18 & with a line of the same S 34° E 140 poles to the
19 Beginning, containing 20 acres, be the same
20 more or less. See Fig 30, 34, 27, 28, 29, 30. And
21 we have allotted to Rebecca Scagg's one share
22 which is designated as lot No 5, which is bou-
23 nded as follows to wit: - Beginning at a stake,
24 corner to lot No 4 & on a line of lot No 1 & with
25 lines of the same N 64° E 16 poles to a stake, thence
26 N 53° E 10 poles to a stake, corner to lot No 1
27 & lot No 6 & with a line of the latter N 35° W
28 100 poles to a stake on the Crabtree line near
29 where Ab Whismann now lives & with said
30 Crabtree line S 55° W 18 poles to a stake, corner
31 to a survey made in the name of Hiram
32 Davis & with lines thereof N 45° W 34 poles to a stake.

1 a Spur on the Crabtree line & with said line
 2 N 55-E 115 poles to a Stake, corner to said
 3 Widows lower lands & with a line of the same
 4 S 46 20 95 poles to the Beginning, Containing 24
 5 acres, be the same more or less, See Fig 19, 20,
 6 21, 1 a, 22, 23, 18, 19. There being no Spring
 7 water on lots Nos 1, 2, 3 & 6, the owners or ten-
 8 ants of said lots shall have the right and
 9 privilege to use water as follows: - The owner
 10 or tenants of lots N^o 1 to use water from a
 11 Spring on lot N^o 4, where John Willis now
 12 lives, and the owner or tenants of lots Nos 2 & 3
 13 to use water from said Spring or a Spring that
 14 that was assigned to Jeremiah Scaggs heirs
 15 from William Hobbs Estate or both, and the
 16 owner or tenants of lot N^o 6, to use water from
 17 a Spring on lot N^o 5, near where Ab. Whisman
 18 now lives, It being represented to us by good
 19 Authority that Jeremiah Scaggs in his lifetime
 20 purchased of Dixon Bittin small portions of
 21 lots Nos 1 & 2, and that that he never obtained
 22 legal title for the same, but the said Bittin ac-
 23 knowledges that he sold him (Scaggs) the land
 24 and received the purchase money for the same,
 25 and we have taken this land into account in
 26 the partition, and we consider it as rightfully
 27 belonging to the said Jeremiah Scaggs Estate.
 28 The portions thus purchased are represented
 29 on the Diagram thus: From the point 4 a
 30 straight line to 8 and around by 7, 6, 5, &
 31 to 4 again, making two small triangles -
 32 they both coming to a point at the point 6.

1 The line as it originally ran between the
2 said Reitter and said Scagg ran straight
3 from the point 4 to 8 or rather from 3 to 8. We
4 are informed that there was no writing of any
5 sort between the parties in relation to said
6 land, and that it was merely a verbal
7 contract between them, and in relation
8 to the rents of the lands, we have ascertained
9 that the Jeff Cox, purchased the share
10 of Shelton wife in the fall of 1866, and that
11 the lands had been rented the first of
12 March previous to that time, and that the
13 rents of that year fell due on the first of
14 March 1867, and that Shelton accepted the
15 rents of that year (1866), and therefore the
16 plaintiff Cox is not entitled to any part
17 of the rents of the land for that year, but
18 that he is entitled to the seventh part of the
19 rents of said land for the year 1867, and the
20 present year (1868), and we have ascertained
21 that the rents of said lands for the year 1867
22 amounted to \$195.31, and the needful and
23 necessary repairs made by the Guardian
24 John Scagg for that year amounted to
25 \$18.35, which leaves a balance due for
26 that year of \$176.96. Which amount fell
27 due on the first of March 1868, one seventh
28 part of which would be \$25.38, which would
29 be the plaintiff's part of the rents for that
30 year (1867), and we have ascertained that
31 the rents of said land for the present
32 year (1868) amount to \$116.00, which amount

1 will fall due the first day of march
2 next 1869, one seventh part of which would
3 amount to \$15.71, making the amount off \$40.99
4 for the two years rents that the plaintiff boy
5 would be entitled to as his part of said rents
6 \$25.28 of which was due the first day of march
7 1868, and the balance off \$15.71, will fall due
8 the first day of march 1869. It appears that
9 the Guardian John Scagg has had entire
10 control of the lands up to the present time and
11 that the Guardian Andis and Burke have
12 had nothing to do with renting the said lands
13 and that the matter is all in the hands of said
14 Scagg. See of which is respectfully subm-
15 itted

16 Carr Bailey Surveyor ^{\$2.34} (Signed) Carr Bailey.
17 John Reaser 5- " \$10.00 (") David Cox } commissioners
18 David Cox " " \$10.00 (") John Reaser }
19 Archibald Shuler chain carrier \$1.50
20 Thomas Andis " " \$1.00
21 Ab Whisman " " \$1.00
22 Virginia

23 At a county Court continued and
24 held for Lee County, at the Courthouse thereof,
25 on Tuesday, January 19th 1869.

26 Jall S. Cox Plaintiff

27 against

28 Jeremiah Scagg Heirs et als Defendants

29 This Cause came on to be heard on the Bill
30 and Exhibits, former decree of the court
31 and Commissioners report, and being argued
32 by Counsel, and the Court being sufficiently

} In chancery

1 advised now finally decrees and orders.
2 It appears to the satisfaction of the Court that
3 the Commissioners appointed by a former
4 decree of the Court to divide the lands of
5 Jeremiah Scaggs deceased among his heirs,
6 and to take an account of rents and improvements,
7 have made a division & allotment amongst
8 & to those entitled thereto and has taken said
9 account, a report of which they filed on the
10 19th of October 1868, and no exceptions having
11 been taken or filed thereto, the action of said
12 Commissioners in the premises is approved by
13 this Court and their report confirmed. It is now
14 finally adjudged & decreed that Dixon S.
15 Lutton take and hold in severally the lot
16 of the said land laid out and allotted to
17 him, it being the part owned by Sheltor &
18 wife, and conveyed by them to the complainant
19 & by him conveyed to the said Dixon S. Lutton
20 & by his order decreed & allotted to said Lutton.
21 It is further adjudged and decreed that
22 Martha Ann Burs take and hold in severally,
23 with all and singular the appurtenances,
24 the lot of said land laid out to her, and it
25 is adjudged and decreed that Polly Scaggs
26 take and hold in severally the lot of land
27 laid off & allotted to her, with all its appur-
28 tenances, and that John Scaggs take and
29 hold in severally the lot of land laid out
30 and allotted to him with its appurtenances,
31 and that Minerva Scaggs take and hold
32 in severally the lot of land laid out and

1 + allotted to her with its appurtenances,
 2 and that Rebecca Scagg take and hold in
 3 severally the lot of land laid out and allotted
 4 to her with its appurtenances, and that Elizabeth
 5 Scagg take and hold in severally, the lot of
 6 land laid out and allotted to her. It is further
 7 adjudged, decreed, and ordered that the Com-
 8 plainant Recover of John Scagg, Guardian
 9 &c, but for the use of Wison & Linton \$40.99, ~~that~~
 10 ~~being the one seventh of the profits for 1867~~
 11 ~~& 1868.~~ after deducting the one seventh
 12 of the value of the improvements \$25.28 of said
 13 sum of \$40.99 is to bear interest from the 1st
 14 day of March 1868, and for which the said
 15 Decree for the use of said Linton may have ex-
 16 ecution - and \$15.71 of said sum of \$40.99 is
 17 to bear interest from the 1st day of March
 18 1869, after which time Execution may
 19 issue therefor, if not paid. It is further ad-
 20 judged, decreed, and ordered that the Clerk
 21 of this Court, tax the costs herein, which the
 22 said parties are ordered to pay in due and
 23 equal proportions, that is, each one of the
 24 parties owning a share of said land
 25 divided is to pay one seventh part of the
 26 costs & expenses of this suit & division of said
 27 land, the parties are hence dismissed &
 28 this Cause is stricken from the Dockett

29
 30 A Copy Test: S. F. Richmond
 31 Clerk
 32

Joel S. Cox (4th)
to E. Copy.
no E. Records and
Comm. Report

Jeremiah Skaggs, etc.

" C "

CS 375

DSB 28
P 571

1 This Deed made the 2^d Day of September
2 in the year 1878 between Dixon S. Lutton
3 and Maria H. Lutton his wife of the County
4 of Lee and the State of Virginia of the one part
5 And Robert E. Lutton of the County and State
6 aforesaid of the other part. Witnesseth that
7 for and in consideration of the sum of three
8 thousand dollars in hand paid the receipt
9 Whereof is hereby acknowledged the said
10 Dixon S. Lutton and Maria H. Lutton his
11 wife do grant bargain and sell unto the
12 said Robert E. Lutton a certain tract or
13 parcel of Land lying and being in the said
14 County of Lee in Yorkum Station and bound-
15 ed as follows to wit. Beginning at an ash
16 an rock corner to the old Wynn land
17 corner to S. W. Young land and with the
18 said Wynn line N 23 1/2° W 168 1/2° poles
19 to a rock on the north side of the wagon road
20 7 1/2 poles from a large white oak stump one
21 of the original corner to said Wynn land
22 thence S 58° E 54 poles to a rock thence S
23 76 1/2° E 40 poles to a rock at the fork of
24 the road thence N 57° E 66 poles to a rock
25 thence N 64° E 19 poles to a rock thence N
26 53° E 10 poles to a rock in the middle of the
27 wagon road thence leaving said road S.
28 40° E 46 poles to a rock in the old Wynn
29 line thence S 61° W 26 poles to a rock corner
30 to A. D. Luttons land and with a line thereof
31 S 23° E 116 poles to a rock on the old Wynn
32 line and with the same S 64° W 144 poles to the

1 Beginning containing 144 1/2 acres be the same
2 more or less. And also one undivided half
3 of the home place of the said Dickson S. Lutton
4 with the said Dickson S. Lutton advances
5 to the said Robert E. Lutton at the price of
6 twenty seven hundred dollars said und-
7 divided half of said home place which home
8 place includes the Hampton place of two
9 hundred and fifty acres more or less the Silas
10 Flanary place of forty acres more or less
11 And an entry of 40 acres on Hookers Knob
12 made in the name of the said R. S. Lutton
13 all the tracts adjoining making in the whole
14 home place 330 be the same more or less.
15 One half of which the said Dixon S. Lutton
16 and Lavina H. Lutton his wife convey unto
17 the said Robert E. Lutton including one half
18 of all the buildings and one half of all the as-
19 tenances thereunto belonging. And the said
20 Dixon S. Lutton and Lavina H. Lutton his wife
21 covenant with the said Robert E. Lutton that they
22 will warrant generally the lands hereby con-
23 veyed. Witness the following signatures and
24 seals.

25 Dixon S. Lutton Seal

26 Lavina H. Lutton Seal
mark

27 State of Virginia County of Lee, to wit:

28 I Carr Bailey a Notary Public
29 for the County aforesaid in the State of Virg-
30 inia do Certify that Dixon S. Lutton and Lavi-
31 na H. Lutton his wife whose names are signed
32 to the Writing hereto annexed bearing date on

1 the 2nd day of September 1878, have ack-
2 nowledged the same before me in the County
3 aforesaid. The said Revena H. Bittou being
4 examined by me privily and apart from
5 her said husband and having the writing
6 aforesaid fully explained to her she the
7 said Revena H. Bittou acknowledged said
8 Writing to be her act and deed and declared
9 that she had willingly executed the same
10 and does not wish to retract it. Given under
11 my hand this September 2nd 1878

12 I
13 Warr Bailey N.P.
14 Virginia Lee County to wit:

15 In the office of the clerk
16 of the said County the 26th day of Aug 1893
17 this Deed was presented and together with
18 the certificate of acknowledgment thereto
19 annexed was admitted to record

20 Teste: S. W. F. Richmond clerk
21 A Copy- Teste: S. W. F. Richmond Clerk
22
23
24
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29
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32

R. E. Litton.
June 23
Copy
of

Rev. S. Litton & wife

" D "

85

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DB 28
P 574

1 This Deed made and entered into this the 4th
2 day of April 1893 by and between D. S.
3 L. Itton and Leavina D. L. Itton his wife
4 of the first part and R. E. L. Itton of the second
5 part all of the County of Lee and State of
6 Virginia Witnesses that for and in con-
7 sideration of the Eight thousand eight hundred
8 & Eighty Dollars and twenty seven hundred
9 Dollars as an advancement in hand paid
10 the receipt of which is hereby acknowledged
11 We the said party of the first doth bargain
12 sell and grant to the said party of the second part
13 with Covenants of General Warranty a certain
14 parcel of Land rather in two divisions Situate
15 in Lee County and in Gosport Station Man-
16 gisterial District and on what is known
17 as Stockers Knob and Wallens ridge and Valley
18 between on either side of Camps Branch, Contain-
19 ing by Survey made at this date by
20 surface measurement Eight hundred
21 and sixty six acres be the same more or less
22 and bounded as follows to wit Beginning
23 of first piece or parcel on a planted
24 rock on the North side of the Public road
25 corner with William Stout thence with the
26 road and said Stouts line S 86 1/4 E
27 54 poles to a planted rock S 75 1/4 E 20 poles
28 & 4 links by an 80 link chain 40 links
29 for one half chain or two poles N 58 1/2
30 E 67 poles to a planted rock N 65 E 19
31 poles and 8 links to a planted rock N 53 1/2
32 E 10 poles and 8 links to a planted rock in the

1 middle of said road thence leaving said
2 road S $37\frac{3}{4}$ E 46 poles & $7\frac{1}{2}$ links to a planted
3 rock corner of A. D. Ditton and thence with
4 his lines S $61\frac{1}{2}$ W 26 poles to a planted rock
5 thence S $21\frac{1}{2}$ E 115 poles and 9 links to a planted
6 rock on what is known as the Wynn line thence
7 N 64 E $72\frac{1}{2}$ poles & 6 links to a stake and planted
8 rock thence S 19 E 137 poles to a stake now but
9 will be a planted rock thence S 60 E 30 poles
10 & 10 links crossing a branch to a planted
11 rock Now a stake agreed by said R. E.
12 Ditton & A. D. Ditton, thence up the branch S
13 $2\frac{1}{4}$ W 7 poles & $1\frac{1}{2}$ links to a stake below
14 a spring thence crossing said branch S
15 $66\frac{3}{4}$ W $2\frac{1}{2}$ poles & $9\frac{1}{2}$ links to a stake
16 thence S $5\frac{3}{4}$ E 17 links to a stake thence S
17 $47\frac{1}{2}$ W 18 poles & $8\frac{1}{2}$ links to a stake, thence
18 S 15 E 111 poles & 6 links to a chestnut oak
19 and small Black oak on top of Wallens
20 ridge thence leaving said A. D. Dittons line
21 and with the top of said ridge and me-
22 anders N $72\frac{1}{2}$ W $8\frac{1}{2}$ poles S 86 W 8 poles & 5
23 links S $76\frac{1}{4}$ W $14\frac{1}{4}$ poles S 86 W 3 poles N 66 W
24 8 poles S 72 W 8 poles S $46\frac{1}{2}$ W $51\frac{1}{2}$ poles S 74
25 W 12 poles S 50 W 6 poles S $76\frac{1}{2}$ W 6 poles, S
26 56 W 4 poles S 83 W 6 poles N 6 $9\frac{1}{2}$ W 16 poles
27 S $67\frac{1}{2}$ W 6 poles S 46 W 7 poles S $84\frac{1}{2}$ W 11 poles
28 S $57\frac{1}{2}$ W 14 poles S $73\frac{1}{2}$ W 6 poles N $81\frac{1}{2}$ W
29 6 poles to a stake, near a rock chipped out of
30 of said ridge thence leaving the top of said
31 ridge and passing over a bluff of rock
32 N $44\frac{3}{4}$ W 30 poles & 2 links to a stake and

1 planted rock near a small ash thence
2 N $11\frac{1}{2}$ W $72\frac{1}{2}$ poles + 4 links to a large su-
3 gar tree on the south side of the Cove Lady
4 Gap Road thence N 11 W 65 poles to a large
5 buckeye thence N $25\frac{1}{2}$ W 36 poles + $4\frac{1}{2}$
6 links to a planted rock in place of a sugar
7 tree now down N $41\frac{1}{2}$ W $57\frac{3}{4}$ to a planted
8 rock on the Wymu line thence S $64\frac{1}{2}$ W 44 poles
9 + 1 link + 1 inch to a stake and planted
10 rock near an ash one of the original trees
11 called for in the original papers and now
12 corner of Harve Young thence CT 2 3 W $189\frac{1}{2}$
13 + 2 inches to the beginning this plat of land
14 contains four hundred + twenty nine acres
15 And with this plat of land the spring on
16 the north side of Wallens ridge and enclosed
17 in a plat of land deeded by the vendors
18 of this conveyance to A. D. Lutton but mentioned
19 in said deed that R. E. Lutton free and Eaq-
20 ual rights to said spring with A. D. Lutton
21 and it is further provided that neither A. D.
22 Lutton nor R. E. Lutton are to sell or any way
23 in cumber his land so as to deprive the
24 other of free and free access to and use
25 of said spring and further the said A. D.
26 Lutton + R. E. Lutton are to erect a fence or
27 fence substantially around said spring
28 so as to protect it from stock and it is fur-
29 ther provided that neither of said parties
30 their heirs or assigns shall ever at any time
31 by pipes or in any other way convey from
32 said spring more than one half of said

1 water so as to deprive the other from his
2 half of said water. And further to this
3 plat of land is granted a right of way
4 to the Spring where William Stout now
5 lives and for full and satisfactory evi-
6 dence of said reference is hereby made
7 to the Commissioners Report in the par-
8 tition of the Estate of Jeremiah Seaggs decd
9 which right of way was reserved by
10 Fleming Shulton and Sarah J. Shulton,
11 and conveyed by them to Joel S. Gay
12 and from Joel S. Gay to D. S. Patton the vendors
13 of this conveyance. The other plat of land
14 of land containing four hundred &
15 thirty seven acres more or less, and
16 adjoining the other plat of land on the
17 crossing line near the road and on a corner
18 with William Stout, Beginning at a place
19 where there was a large white oak called
20 for in original papers, but now a planted
21 post thence S 23 E 10 poles & 4 links passing
22 the Beginning corner of the first named
23 tract at 9 1/2 poles, & 2 links to the center
24 of the road thence South West at
25 right angles 10 ft thence S 23 E 8 7/8 poles
26 & 2 links to Camp Branch thence down
27 said branch as it meanders S 84 1/4 W 6
28 poles & 4 links N 37 W 3 1/2 poles
29 S 62 1/2 W 10 poles & 12 links S 67 1/2 W 7 poles
30 & 6 links S 63 3/4 W 9 poles & 15 links N 53 3/4
31 W 6 poles & 6 links S 79 3/4 W 2 poles S 26
32 W 11 poles S 53 1/2 W 3 poles & 10 links N 72 3/4

1 W 6 poles to a stake in the center of said
 2 Branch thence leaving said Branch S 22
 3 E 30 poles to a stake and planted rock
 4 S 66 $\frac{3}{4}$ W 57 poles + $1\frac{1}{2}$ links to a stake +
 5 planted rock S 22 E 31 poles to a stake
 6 and rock at the North side of the cow road
 7 or turnpike thence with said road S 75 $\frac{3}{4}$
 8 W 53 poles + 9 links to the Flanary line as we now
 9 measure, but if it be more or less it is to go
 10 to the Flanary line thence with the same N 55-
 11 W 55 $\frac{1}{2}$ poles + 3 $\frac{1}{2}$ links to Flanary's corner near
 12 the deep spring as we now measure but ~~it~~
 13 should it prove otherwise this line is to be
 14 with Flanary's line and corner with Flanary's
 15 at or near the deep spring thence so as to divide
 16 the spring and up the said Camp Branch
 17 as it meanders and in the center of said
 18 Branch N 22 $\frac{1}{4}$ E 6 poles S 87 E 1 pole S 71 E
 19 2 poles S 35 E 6 poles N 60 E 3 poles S 71 E 4 $\frac{1}{2}$ N 8 E 3 $\frac{3}{4}$
 20 poles N 42 $\frac{3}{4}$ E 2 poles S 30 E 2 poles S 17 E 4 $\frac{1}{2}$ poles
 21 East 1 $\frac{1}{2}$ poles + 4 links N 30 E 3 $\frac{1}{2}$ poles N 4 $\frac{1}{2}$ W 4
 22 poles N 56 $\frac{1}{2}$ E 3 poles N 85 $\frac{1}{2}$ E 10 poles N 40 E 6 $\frac{1}{2}$
 23 poles + 6 links N 85 E 4 poles N 43 E 4 $\frac{1}{2}$ poles N
 24 56 $\frac{1}{2}$ E 12 $\frac{1}{2}$ poles S 83 E 10 $\frac{1}{2}$ poles + 3 links N 53
 25 E 4 poles N 6 $\frac{1}{2}$ W 7 poles N 57 $\frac{1}{4}$ W 6 $\frac{1}{2}$ poles N
 26 56 $\frac{3}{4}$ E 6 $\frac{1}{2}$ poles N 66 E 9 poles N 49 E 7 poles S
 27 80 E 4 $\frac{1}{2}$ S 26 $\frac{1}{2}$ E 5 poles N 74 $\frac{1}{2}$ E 5 poles S 84 $\frac{1}{2}$
 28 E 6 poles S 24 E 2 poles S 46 W 2 poles S 15 $\frac{1}{2}$ E
 29 3 poles N 77 $\frac{3}{4}$ E 2 poles N 18 $\frac{1}{2}$ E 5 $\frac{1}{2}$ poles N
 30 34 $\frac{1}{2}$ E 4 poles N 54 E 2 poles S 20 $\frac{1}{2}$ E 1 $\frac{1}{2}$ poles
 31 N 5 E 3 poles to a stake in the center of said
 32 Branch thence leaving said Branch N 12 $\frac{1}{4}$

1 W 52 poles & 8 links to a stake and planted
2 rock on the South Side of the public road
3 thence N $17\frac{3}{4}$ W 22 poles & $3\frac{1}{2}$ links to a planted
4 rock S 20 W 22 poles to a planted rock S $16\frac{3}{4}$
5 E 23 poles to a planted rock S 72 W 1 poles to the
6 Center of said road thence with said road
7 N $41\frac{1}{2}$ W 4 poles & 10 links N $86\frac{1}{4}$ W 30 poles N $85\frac{1}{2}$
8 W 6 poles & 12 links S $82\frac{1}{2}$ W 8 poles N $87\frac{1}{4}$ W 2
9 poles & 16 links to a planted rock on the South
10 Side of said road and corner to the Flannery
11 land and with a line thereof N $58\frac{1}{4}$ W
12 102 poles & 8 links to a white oak corner of
13 James Flannery and with his line N $30\frac{1}{4}$
14 E 134 poles to a planted rock and stake
15 S 55 E 8 poles & 8 links to a stake and planted
16 rock N 42 E 13 poles to a stake and planted
17 rock on a rise in about 2 poles of a gum
18 thence N 49 W $64\frac{1}{2}$ poles to a stake and planted
19 rock on top of a spur and corner of D. S.
20 Lutton the Vendor of this conveyance and thence
21 up said spur and with said Luttons line
22 N 35 E 25 poles to a chestnut oak N 28 $\frac{1}{2}$
23 E 22 poles to a walnut, Black oak & small
24 hickory on top of Stockers Knob thence
25 down the said Knob on the North Side
26 N 7 E 34 poles & 13 links to a stake and rock
27 on the north line of the William Hobb Survey
28 of 450 acres thence with a line thereof N $89\frac{3}{4}$
29 E 247 $\frac{1}{2}$ poles to frontiers corner of Francis
30 Willis and with a line thereof S $1\frac{1}{2}$ W 157 $\frac{1}{2}$
31 poles to a white oak passing Willis corner
32 at 127 $\frac{1}{2}$ poles on top of spur and 30 poles

1 of said line is with a line of William
2 Stouts and also corners on said Stouts land
3 and with his line as was agreed by said
4 D. S. Lutton and said William Stout 189 1/4 W
5 86 poles lacking 2 links to a stake and plant
6 ed rock thence S 20 1/4 E 82 poles to a stake
7 and planted rock near a black oak thence
8 S 38 W 38 poles & 1 1/2 links to the Beginning.
9 And said D. S. Lutton and Ravina H. Lutton
10 his wife doth Covenant and agree to
11 and with the said R. E. Lutton that they
12 are lawfully seized of said premises, and
13 have a good right to convey and that said
14 premises is clear of any encumbrances
15 whatever and that they will warrant
16 and forever defend the title herein con
17 veyed to the said R. E. Lutton to him and
18 his heirs executors or assigns forever.
19 In witness whereof we have here unto
20 signed and sealed this Instrument as
21 our free act and deed Day and
22 date above written.

D. S. Lutton Seal

Ravina her H. Lutton Seal
mark

25 State of Va 3
26 Lee County 3

27 I now M. Tate a Notary Public of
28 said County do Certify that D. S. Lutton
29 and Ravina H. Lutton whose names
30 are signed to the foregoing deed of convey
31 ance as vendors personally came before me
32 in my county and acknowledged their

1 Signatures to be their act and deed for
2 the purpose set forth therein Given
3 under my official Signature April 7th 1893
4 Jno M. Tate NP

5 Virginia Bee County to wit:

6 In the Office of the Clerk of
7 the said County the 26th day of Aug 1893
8 this deed was presented and together with
9 the Certificate of acknowledgment thereto
10 annexed was admitted to record

11 Teste: S. H. Richmond Clerk

12
13
14
15
16
17 R. E. Sutton Co

18
19
20 True Copy
21
22
23
24
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28
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30
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32

Given S. Sutton

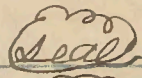
"3"

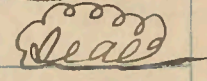
185

This deed made the 2nd day of November 1826
between Henry Miller & Mary C. his wife, of
the county of Lee & State of Virginia of the one
part, and William L. Stout of the county & state
aforesaid of the other part, Witnesses that
for and in consideration of the sum of seven
hundred dollars in hand paid and secured
to be paid the receipt whereof is hereby
acknowledged, the said Henry Miller
and Mary C. his wife do grant, bargain
and sell unto the said William L. Stout
the whole of three certain tracts or parcels
of land, lying and being in the said
County of Lee and in Yorkman's Sta-
tion being part of the land of Jeremiah
Haggs deceased, one tract or parcel
of land being the same that was laid off
and assigned to the said Mary Miller
formerly Haggs, out of the land of the said
Jeremiah Haggs deceased, by Commissioners
appointed by the Circuit of Lee County,
which is bounded as follows, to wit: Begin-
ning at a stake corner to lot No 2, and
on a line of lot No 1, and with the same
N. 56 E 26 poles to a stake corner to
lot No 4, and with a line of the same
N 34 W 140 poles to a stake on Hobbs
line, and with line thereof S 70 20 22
poles to three poplars on a hill side above
the head of a spring, N 86. 20 30 poles to a
stake corner to front of lot No 20, and with
a line of the same due South 13 poles to a beech

and hickory, corner to Hobbs land, and
 with a line of the same S 51 E 78 poles to a
 stake corner to lot No 2, and with lines
 thereof S 68 E 24 poles to a yoplar or a
 flat, thence S 34 E 57 poles to the Beginning,
 containing 38 acres be the same more or less,
 This tract or lot of land is marked on the
 partition of the land of the said Jeremiah
 Skaggs decd as lot No 3, And another tract,
 or parcel of land, being the same tract or lot
 of land laid off and assigned to John B. F. Skaggs
 by said Commissioners out of the land of said
 Jeremiah Skaggs decd, and deeded by
 said John B. F. Skaggs to said Henry Miller,
 said lot is marked in said partition as
 lot No 4, and adjoins the above named
 lot, which boundaries may be ascertained
 by reference to the Commissioners report
 of said partition, which report is on
 record in the Clerks office of the County
 Court of Lee County, which lot contains
 20 acres be the same more or less. And
 one other tract or lot of land adjoining
 the last named lot of land, which lot
 is marked in said partition as lot
 No 5, and which lot of land was laid
 off and assigned by Commissioners to
 Rebecca Skaggs now the wife of Edward
 M. Russell, and deeded by said Russell and
 wife to said Henry Miller, and bounded
 as follows, Beginning on a stake
 corner to lot No 4, and on a line of lot

No 1, and with lines of the same N 64 E 16
poles to a stake, thence N 53 E 10 poles to a
stake corner to lot No 1 and lot No 6
with a line of the latter N 35 W 100 poles
to a stake on the Hobbs line near the Ab
Whisman or lead Bush House. then with
said Hobbs line S 65 W 18 poles to a stake, corner
to a survey made in the name of Hiram Davis
and with lines thereof N 45 W 34 poles to a
stake, thence S 76 W 8 poles to a stake, corner
to lot No 4, and with lines thereof S 34 E 140
poles to the Beginning, Containing 16 acres
be the same more or less. And the said Henry
Miller and Mary L. his wife Covenant with
the said William R. Stout that they will war-
rant generally the land hereby conveyed,
Witness the following signatures and seals,
The vendors lien is retained on said land
till the purchase money is fully paid.

Henry Miller 

Mary L. Miller 

State of Virginia, County of Lee, to wit:—
I, Leasor Bailey a Notary Public for the
County aforesaid, in the State of Virginia
do certify that Henry Miller and Mary
L. Miller the wife of said Henry Miller whose
names are signed to the writing hereto annexed
bearing date on the 7th day of November
1876, have acknowledged the same before
me in ~~my~~ ^{the} County aforesaid. And the said
Mary L. Miller being examined by me privately
and apart from her husband and having

the Writing aforesaid fully explained to her
she, the said Mary Miller, acknowledged said
Writing to be her act and deed and declared
that she had willingly executed the same, and
does not wish to retract it, Given under
my hand this November 7th 1876.

Leas Bailey Notary

Virginia Bee County Court Clerk's Office, March
29th 1881. The foregoing deed bearing date
on the 7th day of November 1876 from
Henry Miller and Mary L. his wife to William
L. Stout, all of Bee County Virginia, was this
admitted to record upon the Certificate
of Leas Bailey, Notary Public for
Bee County Virginia.

Teste: John L. Orr, D.C.

A Copy - Teste: J. F. Richmond, Clerk

Wm L. Stout 14
True Copy Deed

Henry Miller wife
213 19 3/4

21.80

KNOW ALL MEN BY THESE PRESENTS, That we

R. E. Lutton and A. W. Conk
are held and firmly bound unto the Commonwealth of Virginia, in the sum of *three*

hundred

dollars, to the payment whereof, well and truly

to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our

and each of our heirs, executors and administrators, jointly and severally, firmly by these

presents, hereby waiving the benefit of our homestead exemptions as to this obligation,

and any claim, right, or privilege to discharge any liability arising under this bond, or by

virtue of said office or trust, in any currency, funds, counter claims or offsets other than

legal-tender currency of United States. Sealed with our seals, and dated *the 16th* day

of *May 1894*, one thousand eight hundred and

The Condition of The Above Obligation is Such, That whereas the above bound *R. E. Lutton*

on

a

bill in Chancery against

Ira Bailer

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said
Judge an injunction to injoin and restrain *the said Ira Bailer, his ser-*

vants, employees and agents from threatening, or in any way interfering with the said R. E. Lutton or his tenants or not in the said well mentioned premises supplyment of the water and water rights and privileges to the said Spring on lot 4 mentioned in the said bill, and that the said Bailer his agents servants and employees be and they are enjoined from coming to the door

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until

he

, or some one for *him*, shall enter into a

bond, with good security, in the clerk's of of the said court, payable to the Commonwealth

of Virginia, in the penalty of *three hundred*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff,

and all such damages as shall be incurred in case the said injunction be dissolved. Now,

therefore, if the said *R. E. Lutton or some one for him* shall pay all such costs as

may be awarded against *him*, and all such damages as shall be incurred in

case the said injunction be dissolved, then this obligation to be void, or else to remain in

full force and virtue.
Executed in the presence of

R. E. Lutton (SEAL.)
A. W. Conk (SEAL.)
(SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee *A. B. Mursey*
This day personally appeared before me *S. A. G. Hyatt*, clerk of the circuit court of
the county of Lee *Virginia R. E. Lutton and A. W. Conk*
and made oath that *their* estate, after the payment of all *their* just debts, and
those for which he *they* bound as security for others and expect to pay, is
worth the sum of *three hundred* dollars,
over and above exemptions allowed by law.

Given under my hand this *16th* day of *May* 18*94*

Teste: *S. A. G. Hyatt* Clerk.
for A. B. Mursey clerk.

R. E. Sutton (8th)
vs { Eupunctate 8th
Bonds.
L. B. Baker.

Filed May 16th, 1894

A. B. Mursey clerk
by S. T. F. Richmond
D.C.

Received of A B Munsey \$ 19.84 nine-
teen dollars & eighty four Cents The legal
attorneys ^{and witness costs for plaintiffs,} Fee in the Chancery Cause
of R C Litton against Ira Baker
~~also~~ this the 18th day of March 1895-
A H Sewell, atty
for Plaintiff

B H Sewell
Receipt for
costs
A B Munsey

Received of A. B. Munsey Clerk
Eight dollars & fifty cents. in full
of my costs, in the Case of R. E. Littow
vs Ira Barker. This March 18th 1895.
J. W. Richmond Clerk

S. W. F. Richmond
Recpt for costs

Questions asked by Litterer
Counsel

R. E. Litterer
vs
Ira Baker et al. } Ben Channing

Questions by Plaintiff in
above case, to be asked the
witness W. L. Stout.

1 State whether or not you told Mr
Ira Baker before ^{you} sold him your
lands or farm mentioned in this
case, or at the time of the sale,
that R. E. Litterer the plaintiff
had a water right to the
Spring on lot no. 4, in controversy
in this case,

" 2. Did you not tell said Baker
that the plaintiff had a water
right to said Spring before
~~you~~ ^{he} paid you any or
all of the purchase money
for said land,

Bullitt Howell
Atty for Plaintiff

Fur Litter

Purchaser is bound to take notice of all titles in chain of title through which his own title is derived. Not only is he bound by everything stated in the several conveyances constituting that chain but he is bound fully to investigate and explore everything to which his attention is thereby directed. This is constructive notice and cannot therefore be rebutted."

16 A. & E. C. p ⁷⁹⁸ 800 citing numerous decisions.

"In all cases where a purchaser cannot make out a title but by a deed which leads him to another fact, whether by description of the parties, recited in other records, he will be deemed conversant thereof for it was crassa negligentia that he sought not after it; and for the same reason if a purchaser has notice of a deed he is bound by all its contents."

2 Angles Vendors
bottom p 775 (over)

Defendant admits notice
of the partition but claims
nevertheless that he had
no notice of the service.
He only saw a part of
it !!

D. C. Galloway

vs. } Bonifay &
Plffs.

vs. Barker

Litter

v

Baker.

This is a controversy in reference, to the use of water from a spring.

To understand the Contention of each party we must remember—

1 That Jeremiah Scagg late of this County died seized of a tract of land in the County of Lee, in Gorum Station, and near Turkey Cove. This land descended to several children and heirs at law—D. S. Litter purchased out one of these heirs, after which there was partition, and lot No 1 was assigned to him, and in the report of the Commissioners this language is used in the assignment of Lot No 1, to said Litter. "There being no spring water on lots Nos. 1, 2, 3 & 6, the owners of ~~them these lots~~ or tenants of said lots shall have the right and privilege to use water as follows: "X X" The owner or tenants of lot No 1, to use water from a spring on lot No 4 where

where John Willis now lives"
Litten afterwards conveyed this lot
to the plaintiff, and some ten years
after that the water claim -

Some 15 or 18 years ago Wm L. Stent
purchased lot No 4 from Henry
Miller wife the owner thereof.
and occupied it until the fall of
1893 when he sold to Baker.

A leading inquiry in this case is
is a man under the legal duty
of examining the titles of other lands
than those he seeks to purchase.
We maintain not.

See Claiborne v Hull and 88 Va 1046

And we maintain further that
after the partition each lot was a
separate & distinct holding not
so connected with the partition
proceedings as to require an
examination of each lot but

only the one sold. If lot No 4 had been charged with the easement then the purchaser was bound to take notice of it.

This partition hereunder was made in 1868 under the Code of 1860, and the laws then in force. And there was no law authorizing the recording of such proceedings, nor did it pass title and so its recording being unauthorized by law was not constructive notice 75 Va 495 and case then cited. 86 Va 67, and the effect of improperly recorded instruments is fully discussed in the case Corey v. Moore 86 Va 871 especially on Pages 733; 734.

It is submitted therefore that said partition proceedings conferred no legal seizure, was not required or authorized by law to be recorded; they gave no constructive notice, and therefore a purchaser of lot No 4 was not bound to look to them

If however the needer of lot
no 4 were bound to look to
them, it is submitted the water
claim is void for uncertainty.
and cannot be enforced, a
stronger case than this was so
held in Butcher v. Greul, 111
9th. Gratt. 201.

And that reservations must be
as certain as steel, themselves
see ~~Wharton~~ Wharburn on
Real property Vol. 3 P. 431 -
side fig 57. P. 432, 433, 439 -

Lomax, Vol. 2 page 214 fig 26 margin
What is lot number one
entitled to take? water for what?
and for how many? and can
the owner and tenant send their
agents & employees for the same?
We submit that the language
used in the report is so vague
uncertain and inartistic, no
Court - can define & limit the
right of the parties - But if it
means anything does mean that
owners & tenants of lot no one
must go personally after it &
only use it on lot no 1 or may they

5

their other lands & farms under
the privilege.

But the plff asserts that he and
those under whom he claims have
had possession of this right open
adverses & Continuous.

Yet there is not a line of proof
to show that they have ever
done more than in the heat of
summer send their work hands
and tenants to get water, mostly
from a pump or by drent &
not from the spring by & with
the Consent of Stent under his
leave & license; and not until
1891, did the plaintiff or his
vender ever call Stent atten-
tion, to the fact that they asserted
such right, he denied it. re-
fused them the privilege for tenants
not on lot no 1, and they the
plff submitted & there that matter
ended. Now it was this dis-
pute & Contentious and its investigation
no doubt that gave rise to the
conveyance of this water right
so called by D.S. to R.E. Litten in 1893

We say therefore, that there is no proof, that Stout ever had any knowledge of the plffs Claim until 1891, after he had lived on the land and had it enclosed, claiming it as his own for more than 15 years.

But suppose he had here had notice? And sold to Baker, who had no notice, Baker would not be affected by the notice to Stout See 88 Va 1049 where the Court say "nothing is better settled than that a purchaser without notice, from a purchaser with notice is not affected by such notice"

When Baker purchased at a certain price, and entered into a written contract to that effect his rights attached, and unless the plffs had given him notice before the trade and the vesting of his right, he can not complain that Baker went on and completed his Contract, he was bound to do so, and if

the plff has no right against him or the land in his possession he can not require the defendant Baker to aid him by entering into a controversy with Stent.

We submit, that when D. S. Litten sold & conveyed in 1878 this lot omitting the water right as they call it. R. E. Litten the plff had no right, by virtue of that deed to enter on or take water from lot no 4 no such right attached to his deed. D. S. Litten could not exercise such right because not being the owner or tenant of lot no 1 he could not enjoy the easement - so it thereby lapsed, and was abandoned with no hand to receive the fruit, for all this time from 1878, to 1893 - 15 years Stent was upon the land had it enclosed claimed it as his own, without notice actual or constructive of the plffs claim -

Could there be a stranger case made out under the Statute of Limitations? Could there be a clearer holding without notice? The plffs Counsel was pleased in their oral argument ~~to~~ insinuate that Baker, Claimant, was an effort upon his part to obtain an abatement of purchase money against Stent and that this case was so plain that they derided our earnest.

If doubt and suspicion are arguments; we might reply that plff having held his deed to let no 1, without any claim under it to water; remaining for all that time a near neighbor to Stent without ever notifying him that he was taking water not by permission which he had - which is proven by Stent - and after all this to come in and make claim just one man is moving away & an after a stranger coming in to rise up and make such loud acclaim

after such long silence, looks a little like the pliff felt that in the confusion and change he might strengthen or confirm his more than doubtful claim. I do not assert this, but it would be as well borne out by the fact, as that, Baker was only ~~was only~~ seeking to get rid of what they say is a bad bargain. Mr Baker seems quite satisfied. I regret my want of time, to pursue by further examinations these interesting questions, I believe my position to be tenable as follows

1 That Stent, nor Baker were not under any legal obligation to examine the report & proceedings of partition further than they may relate to lot No 4 - of this position I feel confident.

2

That the provision for water right is void for uncertainty - of this I am not so confident, but it is worthy of careful thought

3 I feel, great Confidence in the position that the report or proceeding of the Jeremiah Scaggs estate is not by law required to be recorded, did not confer legal title and was not therefore constructive notice, or necessary to be examined as a monument of title.

4 The proof utterly fails to show that ever Stent knew before 1891 that the plff assert their taking of water as a right. The Bill alleges it the answer denies it and the proof is silent; the plff must therefore fail. This position is asserted with Confidence.

5 Baker is a purchaser without notice, and if Stent had notice it does not affect him this is clearly the law.

The Conveyance of D. S. Litten in 1878, without the so called water right, the long continuance in that State without any assertion is a clear Abandonment see Encyclopedic Vol. 1 Little Abandonment. And a conveyance in 1893 could not revive it. It is not such an incident as follows the land but must as it relates to an after tract be conveyed.

- 6 The whole case shows that less harm will result to the plff, by a denial of his claim than will accrue to the defendant by establishing it. The witnesses say Litten's land would be damaged \$10 per acre \$200.00 The same witnesses say by granting the right Baker's Cut No 4 would be damaged \$500.00 A familiar principle of equity is it will by its aid do a greater injury that good, unless upon the plainest proof of conduct & the acts of the parties.

Baker

and Brief

Litter.

~~~~~

A more equitable mode therefore  
would be to give Baker the  
option to pay this \$200 or allow  
the right if the plff could at all  
succeed. The specific execution  
of Contract is always matter of  
sound judicial discretion. See  
Reynolds v. Necessary 88 Va. 125  
all of which is respectfully  
submitted.

A. L. Bridenere



To Mr. Ira Baker,

TAKE NOTICE. That I on the 2<sup>d</sup> day of

October, 1894, at the Law Office of B. H. Sewell,  
in the Town of Jourdsville Lee County Vir-  
ginia.

will proceed to take the depositions of Floyd Shuler, J. W. Rivers

J. C. Flannery, D. S. Litton, A. D. Litton and others

which, when taken, are intended to be read as evidence on my behalf in a certain suit in Equity

now pending in the Circuit Court of Lee County, State of Virginia, in which

I am plaintiff and  
You are defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

This September 25<sup>th</sup>, 1894.

Very Respectfully,

B. E. Litton,  
By Counsel.



R. E. Sutton.  
vs Notice  
In Baker.

---

Executed Sept  
the 27-1894 by  
deposing a true  
office copy of  
the within  
Notice to Geo  
Baker.

This Sept 24-1894  
L. M. Wade D. S.  
for C. E. Flannery  
S. L. Co.



# The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*Ira Baster*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *3<sup>rd</sup>* Monday in *May*, 189*4*, to answer a bill in Chancery, exhibited against *him* in our said court by *R. E. Cotton*

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *16<sup>th</sup>* day of *May*, 189*4*, and in the *11<sup>8</sup>* year of the Commonwealth.

*A. B. Munsey* Clerk.  
*By S. V. F. Richmond & Co*



The necessary affidavit and bond required by ~~injunction~~ order having been made and filed. The defendant Ira Baker, his servants, employees, and agents be and he and they are hereby enjoined and prohibited from threatening or in any way interfering with the said R. E. Litton or his servants of lot No 1 in the said bill mentioned, in the use and enjoyment of the water and water rights and privileges to the spring on lot No 4 mentioned in the said bill, and that the said Baker his agents, servants, employees, be and they are, hereby enjoined from loading the door of the house, which has been built over the said spring, until the further order of this Court.

R. E. Litton.

US. { SUBPENA  
IN CHANCERY.

Ira Baker.

D. S.

p. q.

To 2<sup>d</sup> May

Rules,

1894.  
Circuit Court.

Executed May the  
18-1894 by Delmar  
a true officer copy  
of the within same  
to Ira Baker this  
May the 19-1894  
L. E. Wade D. S. for  
R. E. Litton  
S. L. C.

7

May the 16. 1894  
Mr. T. M. Wade, you must file  
out the papers for Mr. Litton  
or we will get the  
D. S. Litton



Robert Litton

TAKE NOTICE, That \_\_\_\_\_ on the 3 day of

Nov., 1894 at The Law office of  
A. L. Pridemore in the town of Jrus-  
ville Lee County Virginia I will  
will proceed to take the deposition of Wm L. Stout and others

which, when taken, are intended to be read as evidence on my behalf in a certain suit in Chancery  
now pending in the Circuit Court of Lee County, State of Virginia, in which  
you are plff plaintiff and  
I am defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

Oct-29, 1894

Very Respectfully,

Wm Baker  
by Counsel



Virginia Lee County to wit  
This day Nathaniel Baker personally  
appeared before me and made oath  
that on the 31<sup>st</sup> day of October 1894, he  
delivered to Robert E. Litten a true copy  
of its within notice. Given under my  
hand this 5<sup>th</sup> day of Nov. 1894

Harvey Young N.P.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU TO SUMMON

*X* Floyd Shuler *X* J. W. Rivers and  
*X* J. B. Flanary

at the Law office of B. H. Sewell in the town of Jonesville Va  
to appear before the Judge of our Circuit Court of Lee County, at the court house thereof on the 2nd  
day of October 1894, to testify and the truth to say in behalf of the Plaintiff

in a certain matter of controversy in our said Court,  
before the said Judge depending and undetermined between

R. E. Litton

Plaintiff

and

Ira Baker

Defendant :

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the 25th day of September 1894, and in the 119th year of  
the Commonwealth.

A. B. Munsey Clerk.



R. E. Litton

vs { SUBPENA  
FOR  
WITNESS.

Ira Baker

Circuit Court, the 2<sup>nd</sup> day of

October 1894

Executed by  
sum all the  
within wit-  
of this subpoena  
this Sept 29 194  
L. M. Wade D. S.  
for R. E. Litton  
S. L. G.



Bill in  
Blancery  
Ira Baker et al.

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